

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

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discussions at the constitutional convention which adopted the wording.<sup>4</sup>

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4. In a long line of cases prior to 1978 this court had reaffirmed its reliance on the "plain meaning" rule in interpreting enacted law. *Poulin v. Zartman*, 542 P.2d 251, 270 (Alaska 1975) on rehearing, 548 P.2d 1299; *Roderick v. Sullivan*, 528 P.2d 450, 453-55 (Alaska 1974); *Alaska Public Employees Ass'n v. State*, 525 P.2d 12, 14-15 (Alaska 1974); *State v. City of Anchorage*, 513 P.2d 1104, 1109 (Alaska 1973); *Homer Electric Ass'n v. City of Kenai*, 423 P.2d 285, 289 n.22 (Alaska 1967); *Application of Babcock*, 387 P.2d 694, 696 (Alaska 1963); *Alaska Mines & Minerals, Inc. v. Alaska Indus. Bd.*, 354 P.2d 376, 379 (Alaska 1960). The rule stated, "[w]here the meaning of a statute is apparent, there is no need to resort to methods of statutory construction." *White v. Alaska Ins. Guaranty Ass'n*, 592 P.2d 367, 369 (Alaska 1979).

However, in the recent case of *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534, 540 n.7 (Alaska 1978), we expressly "reject[ed] the so-called 'plain meaning' rule as a strict exclusionary rule." We then went on to draw an analogy between the use of the plain meaning rule in the interpretation of enacted law and the former rule for the interpretation of contracts where a preliminary finding of ambiguity was required before extrinsic sources could be consulted. Id.

Despite the North Slope decision, several of our subsequent cases have nevertheless applied the mechanical plain meaning rule. *Horowitz v. Alaska Bar Ass'n*, 609 P.2d 39, 41 (Alaska 1980); *City & Borough of Juneau v. Thibodeau*, 595 P.2d 626, 635 (Alaska 1979); *White v. Alaska Ins. Guaranty Ass'n*, 592 P.2d 367, 369 (Alaska 1979); *Hafling v. Inland Boatmen's Union of the Pacific*, 585 P.2d 870, 872 (Alaska 1978).

The true issue in interpreting enacted law is the conflict between the meaning the enacting body intended and the meaning conveyed to others. 2A. Sutherland, *Statutory Construction* § 48.02, at 18-5 (4th ed. 1973). The conflict is between what the sender meant and what the receiver understands. Id. § 45.08, at 22. The "plain meaning" rule has its basis in this conflict. Obviously, there are elements of unfairness where legislative intent is used to vary the apparent meaning of statutory words. Id. § 48.02, at

(Cont'd)

The origin of section 7's prohibition of earmarking can be traced back through the constitutional convention records to the Alaska Statehood Commission's studies which were prepared for the use of the delegates at the conven-

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4. (Cont'd)

185-86. This has led some members of the judiciary to reject completely the consideration of legislative intent. Justice Holmes once remarked that, "we do not inquire what the legislature meant; we ask only what the statute means." Id. § 45.07, at 20. On the other hand, most decisions speak in terms of legislative intent as if nothing else mattered in interpretation. Id.

Neither extreme expressed above provides a realistic and workable approach to the reconciliation of the intent and meaning approaches to the interpretation of enacted law. Part of the problem stems from ambiguity being a relative concept. Words have no intrinsic meaning; what is clear to one person is ambiguous and obscure to another. Id. § 45.02, at 4-5. As one court stated: "We think the statute is plain on its face, but since words are necessarily inexact and ambiguity is a relative concept, we now turn to the legislative history, mindful that the plainer the language, the more convincing contrary legislative history must be." United States v. United States Steel Corp., 482 F.2d 439, 444 (7th Cir. 1973), cert. denied 414 U.S. 909, 38 L. Ed. 2d 147. In our recent decision of State v. City of Haines, 627 P.2d 1047, 1049 n.6 (Alaska 1981), we interpreted North Slope as having adopted just such a sliding scale approach as articulated in United States Steel. Our cases listed above are therefore no longer authoritative to the extent that they hold for a mechanical application of the plain meaning rule.

tion.<sup>5</sup> One of the studies noted that "[t]he severe obstacle to the scope and flexibility of budgeting results from the earmarking or dedication of certain revenue for specified purposes or funds." 3 Alaska Statehood Commission, Constitutional Studies pt. IX, at 27 (1955). The study stated that one of the key reasons for the popularity of dedicated taxes was that they reduced taxpayer resistance by guaranteeing that the tax would be used to benefit those who paid it. Id.

The study then noted that earmarking curtailed the exercise of budgetary controls and simply amounted to an abdication of legislative responsibility. Id. at 29-30. Throughout the discussion of earmarking, the study used the terms revenues, funds, and taxes interchangeably. Id. at 27-30.

This study resulted in the inclusion in the constitution of an express prohibition of dedicated funds. As originally proposed by committee, this section read: "All

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5. Alaska Statehood Commission, Constitutional Studies (1955). This publication, consisting of three volumes, collected staff research papers on other constitutions. The papers were prepared under the authority of the Alaska territorial legislature for use at the constitutional convention. Ch. 108 SLA 1949. These studies were mailed to all delegates before the convention convened and were available for use, and often referred to, in the proceedings. Alaska Statehood Committee, Handbook for Delegates to the Alaska Constitutional Convention 4 (1955).

revenues shall be deposited in the state treasury without allocation for special purposes. . . ." 6 Alaska Const. Conv. Proceed., app. V, at 106-07 (emphasis added). In the commentary accompanying the committee's proposed article, the motivation that prompted the inclusion of the restriction on earmarking was expressed:

Even those persons or interests who seek the dedication of revenues for their own projects will admit that the earmarking of taxes or fees for other interests is a fiscal evil. But if allocation is permitted for one interest the denial of it to another is difficult, and the more special funds are set up the more difficult it becomes to deny other requests until the point is reached where neither the governor nor the legislature has any real control over the finances of the state. In one Rocky Mountain state the legislature is free to appropriate only 17 per cent of the tax collections; the rest are dedicated. In Alaska at present, 27 per cent of territorial funds are earmarked, primarily for school construction and roads.

Id. at 111.

After presentation of the nondedication provision by the Finance and Taxation Committee, it was the subject of much debate and consideration. However, before significant discussion had taken place on the section, the committee sought to have it amended to its present form, changing the words "all revenue" to "the proceeds of any state tax or license." 4 Alaska Const. Conv. Proceed. 2361.

Under the original, all-inclusive prohibition of the dedication of "all revenues," there is no doubt that it was intended to prohibit any and all dedications. The committee intended it to prohibit not only the dedication of taxes, but also such revenue as the proceeds from the sale of state lands. See 3 Alaska Const. Conv. Proceed. 2317-19. The committee's spokesman stated that the purpose of the proposed amendment was to allow for the setting up of certain special funds, such as sinking funds for the repayment of bonds, but to prohibit the earmarking of any special tax to that sinking fund. 4 Alaska Const. Conv. Proceed. 2363. Thus, the change did not seek to exempt some sources of revenue from the prohibition, but was intended instead to allow necessary dedication of funds once they were received and placed in the general fund. 1975 Alaska Op. Atty. Gen. No. 9 at 10 (May 12). Review of the convention discussion shows that the amendment was not intended to limit the prohibition of earmarking. The convention delegate also used the words revenue, funds, and taxes interchangeably. 4 Alaska Const. Conv. Proceed. 2361-89, 2401-15; 5 Alaska Const. Conv. Proceed. 3415-20.

A well-researched Alaska Attorney General's opinion reaches the same conclusion. After carefully and minutely detailing the debate of the constitutional convention on the point, the opinion states:

Section 7 of Article IX of the state Constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words "proceeds of any tax or license" are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues.

Accordingly, it is our conclusion that the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs.

1975 Alaska Op. Atty. Gen. No. 9 at 24 (May 2).<sup>6</sup>

We agree and hold that since the constitution prohibits the dedication of any source of revenue, including both "taxes" and "special assessments," the assessments authorized by AS 16.10.530 are "proceeds of a state tax or license," within the meaning of article IX, section 7, whether or not the salmon assessments fit the definition of "special assessments."

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6. See also, 1978 Alaska Op. Atty. Gen. No. 22 (June 2); 1959 Alaska Op. Atty. Gen. No. 7 (March 11).

C. Is Section 530 Nonetheless Valid as an Exercise of the Enumerated Powers Contained in the Natural Resources Article?

The defendants claim that the legislature's power to deal with natural resources of the state, contained in article VIII, gives the legislature the power to create a dedicated fund, despite the express prohibition of dedicated funds contained in article IX, section 7. They particularly emphasize the legislature's and the state's powers to provide facilities for the development of fisheries under section 5<sup>7</sup> and the power to promote the development of aquaculture under section 15.<sup>8</sup>

Despite defendants' contentions to the contrary, section 530 assessments are an exercise of the taxing power, the purpose of which is to raise revenue to construct hatcheries. Nothing contained in article VIII can be construed

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7. Article VIII, section 5 of the Alaska Constitution provides in relevant part: "The legislature may provide for facilities, improvements, and services . . . to assure fuller utilization and development of the fisheries . . . ."

8. Article VIII, section 15 of the Alaska Constitution provides in relevant part: "No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery . . . to promote the efficient development of aquaculture in the State."

to grant the legislature the power to ignore other express constitutional limitations on its taxing power just because it is legislating in an area that concerns natural resources, such as fisheries or aquaculture.

III. DOES SECTION 530 IMPERMISSIBLY DELEGATE THE LEGISLATURE'S TAXING POWERS TO PRIVATE ASSOCIATIONS AND A STATE ADMINISTRATIVE AGENCY?

The plaintiffs present two major grounds upon which they claim section 530 should be held to be an unconstitutional delegation of the legislature's taxing power. First, they contend that the taxing power is an essential legislative power which cannot be delegated by the legislature. Second, they assert that the state constitution expressly provides that the legislature's taxing power may be delegated to boroughs and cities only.

The associations and the state maintain that the regional associations constitute service areas in the unorganized borough and that under the state constitution the state may validly delegate taxing powers to such a service area.

In this case, two types of delegation made by section 530 are questioned. The first is the discretion vested in the Commissioner of Commerce and Economic Development to approve the salmon assessments. The second is the

delegation to the regional associations of the decision to impose the assessment. Because we have determined that the delegation to the regional association is unconstitutional, we need not reach the question whether the delegation to the Commissioner is an impermissible delegation to an administrative agency.

We think article X, section 2 of the state constitution makes it clear that the legislature may not delegate its taxing power to an entity other than a borough or a city. The legislature is, of course, free to itself impose an assessment on limited entry permit holders, but it may not create an independent entity with authority to decide whether to impose the tax. The Alaska Constitution's framers sought to proscribe just such entities when they wrote the constitutional provisions at issue here.

The framers of the Alaska Constitution were aware of and were determined to avoid the proliferation of special districts with taxing powers that had occurred in other states. Thus, article X, section 1 provides in relevant part:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions.

Section 2 of the same article states:

All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Examination of the convention proceedings shows the delegates' determination to ensure centralized planning and coordination of government functions by limiting the taxing power to governmental units with broad rather than specialized concerns. See 4 Alaska Const. Conv. Proceed. 2611-7, 2701-3. See also Alaska Statehood Commission, Constitutional Studies, supra, pt. VIII, 3-8, 18-24, 51-64.<sup>9</sup>

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9. One of the convention delegates expressed this sentiment as follows:

I think the purpose of this article is to simplify our governmental procedure and also to prevent an overlapping of government functions. Now, we have two governmental functions set up here, the cities and the boroughs. I think that is plenty. They can provide for everything including the schools. So now, if the camel gets his head in the tent . . . he probably will be all in the tent, bringing with him the amendments that established public utility districts, health districts, public improvement districts, and we will be right back to our old method of numerous taxing bodies which we want to get away from.

<sup>4</sup> Alaska Const. Conv. Proceed. 2699-700.

The report made by the convention delegates to the voters also expresses this sentiment. It states:

The convention sought to provide for a simple, flexible system of local government adapted to the needs of the people of Alaska. It was determined to guard against the creation of unnecessary local units and taxing authorities or the establishment of anything like the typical county with its tight unchangeable boundaries, its heavy overhead of elected officials, and independent boards, and its inadequate powers and finances.

There will be just two classes of local governments: boroughs and cities.

Proposed Constitution for the State of Alaska: A Report to the People of Alaska from the Alaska Constitutional Convention 3.

In an effort to get around the prohibitions on the delegation of taxing powers contained in article X, sections 1 and 2 of the constitution, the defendants rely on the following provisions:

First, section 5 of article X provides:

Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

Second, Section 6 of the same article states:

The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

Third, AS 16.10.380(c) provides:

(c) A qualified regional association, when it becomes a nonprofit corporation under AS 10.20, is established as a service area in the unorganized borough under AS 29.03.020 for the purpose of providing salmon enhancement services.

The defendants argue that AS 16.10.380(c) is effective to make the regional associations service areas within the unorganized borough since the two associations here cover mostly unorganized borough area. They then maintain that the legislature may, by acting in the role of a borough assembly, grant an association independent taxing powers, as service areas in an unorganized borough under article X, section 6.

The trial court found this argument unpersuasive under the circumstances of this case. We agree.

First, the service areas envisioned in section 5 and 6 must either be "within a . . . borough" under section 5, or "in unorganized boroughs" under section 6. This is certainly not true in the present case where two associations span the entire Alaska panhandle, an area that includes several organized boroughs and cities.

Second, the statute states that the private, nonprofit corporation itself becomes the service area. Such an association is completely independent of any government control. In addition, there is no representative relationship between its directors, officers, and members and the commercial fishermen to whom it is to provide services. AS 16.10.380. Such an entity has no political responsibility and cannot be granted unfettered discretion in governing a "service area."

In conclusion, then, we hold that the statute impermissibly delegates the taxing power to the regional associations, violating article X, section 2 of Alaska's constitution.

IV. DID THE TRIAL COURT ERR IN CERTIFY-  
ING THE SUIT AS A CLASS ACTION?

The associations and the state raise two issues upon which they claim the trial court erred in certifying the plaintiff's class. First, they claim that the trial court erred in certifying the class after the court had already passed on the merits of the case in the summary judgment motions. Second, they maintain that the trial court erred in finding that the representative parties would

fairly and adequately protect the interests of the class. These two aspects are discussed below.<sup>10</sup>

A. Did the Trial Court Err in Deciding the Merits of the Action Before Deciding Whether to Certify the Fishermen's Class?

The fishermen brought their suit as a class action from the time of the original complaint. Early in the case, the plaintiffs moved the court for class certification and the court issued an order finding that two of the requirements of a class action had been met; namely that the class of plaintiffs was so numerous that joinder of all members would be impracticable and that there were questions of law

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10. The parties and the court below have treated this class action as one brought pursuant to Civil Rule 23(b)(3). On examination, it is apparent that this type of suit fits within Rule 23(b)(2), and possibly also within Rule 23(b)(1). Professor Moore states:

If an action can be maintained under (b)(1) and/or (b)(2), and also under (b)(3), the court should order that the suit be maintained as a class action under (b)(1) and/or (b)(2), rather than under (b)(3), so that the judgment will have res judicata effect as to the class (with no member having the right to opt out), and not defeat the policy underlying the (b)(1) and (b)(2) class suits.

3B J. Moore, Federal Practice ¶ 23.31[3], at 23-262 (1980) (footnote omitted).

common to the class. Alaska R. Civ. P. 23(a)(1), (2). Later, the plaintiffs again moved for class certification. While this motion was still pending, the defendant associations and the state filed a motion for summary judgment. The plaintiffs replied with their own summary judgment motion. The court then gave its partial summary judgment order in favor of the plaintiffs. Finally, the trial court subsequently certified the class.

The defendants maintain the trial court erred in entering the judgment on the merits before it certified the class action. They rely on Civil Rule 23(c)(1), which provides in relevant part: "As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained."

Relying on the identical federal rule in Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 40 L. Ed. 2d 732 (1974), the United States Supreme Court held that a trial court may not hold a preliminary hearing on the merits of a case to determine whether a plaintiff is likely to prevail on his claims so as to allow the imposition of the costs of class notice on the defendant. Id. at 177-78, 40 L. Ed. 2d at 748-49. Defendants contend this holding implies that under no circumstances may a court decide the merits of a case before passing on the issue of class certification.

While some courts have indeed required that class certification precede a determination of the merits,<sup>11</sup> it is apparent that any right to such a procedure can be waived, either expressly<sup>12</sup> or impliedly.<sup>13</sup> We have no difficulty finding a waiver under the facts of this case. The plaintiffs diligently sought adjudication of the class action issues by twice moving for certification. The defendants initiated summary judgment proceedings while plaintiffs' second motion for certification of the class action was pending. Under these circumstances, the trial court did not err in ruling on the merits and then certifying the class.

B. Did the Trial Court Err in Finding that the Named Plaintiffs Provided Adequate Representation for the Class?

Civil Rule 23(a)(4) provides that a class action can be maintained only if "the representative parties will

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11. Peritz v. Liberty Loan Corp., 523 F.2d 349, 353-54 (7th Cir. 1975); Home Savings & Loan Ass'n v. Superior Court, 117 Cal. Rptr. 485 (App. 1974).

12. Colwell Co. v. Superior Court, 123 Cal. Rptr. 228, 230 (App. 1975); Katz v. Carte Blanche Corp., 496 F.2d 747, 762 (3d Cir. 1974) (en banc), cert. denied, 419 U.S. 885, 42 L. Ed. 2d 125 (1975).

13. Civil Serv. Emp. Ins. Co. v. Superior Court, 584 P.2d 497, 502-04 (Cal. 1978); Peritz, 523 F.2d at 354 n.4; 3B J. Moore, supra note 8, ¶ 23.50, at 23-425 to 23-428.

fairly and adequately protect the interests of the class." The defendants contend that the plaintiffs could not provide adequate representation for the class because they had interests antagonistic to other members of the class.

First, the determination of the adequacy of representation in a class action is a question of fact. Guerine v. J & W Investment, Inc., 544 F.2d 863, 864 (5th Cir. 1977); 7 C. Wright & A. Miller, Federal Practice and Procedure § 1765, at 622-23 (1972). As a question of fact, the trial court's finding will not be reversed unless clearly erroneous; in other words the trial court will not be reversed unless, in light of the whole record, it can be said with a definite and firm conviction that the trial judge was clearly mistaken. Alaska Foods, Inc. v. American Mfrs. Mut. Ins. Co., 482 P.2d 842, 848 (Alaska 1971).

Second, in order to bar a suit, the antagonism "must be as to the subject matter of the suit." Berman v. Narragansett Racing Ass'n, 414 F.2d 311, 317 (1st Cir. 1969), cert. denied, 396 U.S. 1037, 24 L. Ed. 2d 681 (1970); 7 C. Wright & A. Miller, supra, § 1768, at 639; 3B J. Moore, supra note 8, ¶ 23.07[3], at 23-237.

Third, it should be noted that in a suit to strike down a statute as unconstitutional, the requirement of adequate representation loses vitality. The effect of a finding of unconstitutionality will affect everyone, not

just the parties before the court. "Thus, even if [a] plaintiff is not a proper representative in the traditional sense, striking a class claim will not effectively change the end result if the party successfully proceeds on an individual basis." 7 C. Wright & A. Miller, supra, § 1771, at 664. See also 3B J. Moore, supra note 8, ¶ 23.40[3], at 23-299 n.15. In the present case, this would simply mean that the named plaintiffs would be burdened with the expenses of the suit without reimbursement from a class recovery. The effect of the action on the defendants and the rest of the class is the same whether the suit is brought as a class or as an individual action.

Finally, it should be noted that in a suit seeking to have a statute declared unconstitutional, there are only two sides to the argument; either the statute is constitutional or it is not. In such a case where there are no inherent conflicts inter se among class members (such as rights to differing shares in a limited fund), the interests of class members antagonistic to the representatives' constitutional attack will usually be adequately represented by the defendants.

In the present case, the trial court was not clearly erroneous in finding the representation of the class to be adequate. First, the major antagonism claimed was that most of the fishermen in the region had supported, by

their votes, mandatory assessments. Since the basis of this suit is the seeking of a declaration of the constitutionality of a statute, the rights of all class members are affected in the same way, whether or not it is brought as a class action. Moreover, the defendant associations and the state have vigorously opposed the constitutional attack of the plaintiffs and have thereby necessarily represented the interests of antagonistic class members to have the statute declared constitutional.

V. DID THE TRIAL COURT ERR IN FINDING THE DOCTRINE OF LACHES INAPPLICABLE?

The trial court held that the doctrine of laches was inapplicable on the facts of the present case. On appeal the defendants have contested this finding and both sides have extensively argued the traditional elements of laches, unreasonable delay and resulting prejudice. However, the discussion of the elements of laches is irrelevant since laches is simply inapplicable to any of the remedies sought in this case.

The suit seeks three basic forms of relief. First, a refund of all assessments paid under the statute is sought on a common count. Since this is a general assumpsit common-law cause of action for the refund of taxes wrongly

paid, the six-year statute of limitations contained in AS 09.10.050(3) would apply to this action at law. State v. Wakefield Fisheries, Inc., 495 P.2d 166, 172 (Alaska 1972). The other two types of relief sought, a declaratory judgment and a permanent injunction, are prospective in application and seek to prevent future threatened harm. A laches analysis is simply inappropriate, since each new assessment would give rise to a new cause of action.

VI. DID THE COURT ERR IN FINDING THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES INAPPLICABLE?

The trial court was correct in holding inapplicable the doctrine requiring the exhaustion of administrative remedies before seeking relief in the superior court. See Davis, Administrative Law Treatise § 20.04 (1st ed. 1958). This was not an administrative adjudicatory proceeding which had various routes of administrative appeal. Rather, the implementation of the salmon assessment was administrative legislative action not subject to appeal. The only action which the fishermen could take in the administrative process was to vote in the election on a proposed assessment. There simply were no administrative remedies to exhaust.

The judgment of the superior court is AFFIRMED in all respects.

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IDENTIFICATION:

BILL NAME: "An Act making a special appropriation for payment as a grant to the City of Cordova for a feasibility study of the Bering River coal field port and transportation system; and providing for an effective date."

SPONSOR(S): Resources

RELATED BILLS PENDING: *HB 804*

DATE INTRODUCED: 3/2/82

REFERRALS Resources  
Finance

INITIAL RESEARCH:

INITIAL BILL SUMMARY COMPLETED

SUMMARY BY LEGAL DIVISION:  
DEPT. OF LAW SUMMARY:

SPONSOR CONTACTED FOR BACKUP MATERIALS:

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:

STAFF MEMO TO COMMITTEE:

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES: *Coal Proppes - Chugach Nativex*

SUGGESTED AMENDMENTS/CS DRAFTED:

*6-1305 Mark Whitton DVR 1/13/82  
Municipal League - Ginny Chitwood 1/13/82  
(276-1088) 1/13/82*

SEARCH - QUERY  
00001 '37.05.3'

~~SB 830 incorporates these new provisions.~~  
SB 840

CH004 DOCUMENT= 1 OF 3  
CHAPTER NUMBER  
CH004  
SPECIAL INFO  
CHAPTER 4

SOURCE: SB 559 AM  
VETO OVERRIDDEN: JANUARY 15, 1982  
ACTUAL EFFECTIVE DATE: JANUARY 16, 1982

RELATING TO

AN ACT  
RELATING TO STATE GRANTS; AND PROVIDING FOR AN EFFECTIVE DATE.

TEXT

\* SECTION 1. AS 37.05.315 IS REPEALED AND REENACTED TO READ:  
SEC. 37.05.315. GRANTS TO MUNICIPALITIES. (A) WHEN AN AMOUNT IS APPROPRIATED OR ALLOCATED AS A GRANT TO A MUNICIPALITY, THE DEPARTMENT OF ADMINISTRATION SHALL PROMPTLY NOTIFY THE MUNICIPALITY OF THE AVAILABILITY OF THE GRANT. WHEN THE DEPARTMENT OF ADMINISTRATION RECEIVES AN AGREEMENT EXECUTED BY THE MUNICIPALITY WHICH PROVIDES THAT THE MUNICIPALITY (1) WILL SPEND THE GRANT FOR THE PURPOSES SPECIFIED IN THE APPROPRIATION OR ALLOCATION; (2) WILL ALLOW, ON REQUEST, AN AUDIT BY THE STATE OF THE USES MADE OF THE GRANT; AND (3) ASSURES THAT, TO THE EXTENT CONSISTENT WITH THE PURPOSE OF THE APPROPRIATION OR ALLOCATION, THE FACILITIES AND SERVICES PROVIDED WITH THE GRANT WILL BE AVAILABLE FOR THE USE OF THE GENERAL PUBLIC, THE DEPARTMENT OF ADMINISTRATION SHALL PAY THE GRANT DIRECTLY TO THE MUNICIPALITY. THE AGREEMENT EXECUTED BY A MUNICIPALITY UNDER THIS SECTION SHALL BE ON A FORM FURNISHED BY THE DEPARTMENT OF ADMINISTRATION AND SHALL BE EXECUTED WITHIN 60 DAYS AFTER THE EFFECTIVE DATE OF THE APPROPRIATION OR ALLOCATION.

(B) AN APPROPRIATION OR ALLOCATION FOR A GRANT TO A MUNICIPALITY FOR CONSTRUCTION OF A PUBLIC FACILITY LAPSES IF SUBSTANTIAL, ONGOING WORK ON THE PROJECT HAS NOT BEGUN WITHIN FIVE YEARS AFTER THE EFFECTIVE DATE OF THE APPROPRIATION OR ALLOCATION.

(C) IN ACCEPTING A GRANT OF MONEY FOR CONSTRUCTION OF A PUBLIC FACILITY, A MUNICIPALITY COVENANTS WITH THE STATE THAT IT WILL OPERATE AND MAINTAIN THE FACILITY FOR THE PRACTICAL LIFE OF THE FACILITY AND THAT THE MUNICIPALITY WILL NOT LOOK TO THE STATE TO OPERATE OR MAINTAIN THE FACILITY OR PAY FOR ITS OPERATION OR MAINTENANCE. THIS REQUIREMENT DOES NOT APPLY TO A GRANT OF MONEY FOR REPAIR OR IMPROVEMENT OF AN EXISTING FACILITY OPERATED OR MAINTAINED BY THE STATE AT THE TIME THE GRANT IS ACCEPTED IF THE REPAIR OR IMPROVEMENT FOR WHICH THE GRANT IS MADE WILL NOT SUBSTANTIALLY INCREASE THE OPERATING OR MAINTENANCE COSTS TO THE STATE.

(D) NOT LESS THAN 20 PERCENT OF A GRANT SHALL BE PAID TO A MUNICIPALITY WITHIN 10 DAYS OF THE EFFECTIVE DATE OF THE AGREEMENT UNDER (A) OF THIS SECTION. THE REMAINDER OF THE GRANT SHALL BE PAID EITHER IN MONTHLY INSTALLMENTS EQUAL TO THE AMOUNT OF GRANT MONEY THE MUNICIPALITY EXPENDED IN THE

PREVIOUS MONTH OR IN A LUMP SUM AS DETERMINED BY THE DEPARTMENT OF ADMINISTRATION.

\* SEC. 2. A<sup>c</sup> 37.05 IS AMENDED BY ADDING NEW SECTIONS TO READ:

~~SEC. 37.05.216. GRANTS TO NAMED RECIPIENTS.~~ WHEN AN AMOUNT IS APPROPRIATED OR ALLOCATED TO A DEPARTMENT AS A GRANT FOR A NAMED RECIPIENT WHICH IS NOT A MUNICIPALITY, THE DEPARTMENT TO WHICH THE APPROPRIATION OR ALLOCATION IS MADE SHALL PROMPTLY NOTIFY THE NAMED RECIPIENT OF THE AVAILABILITY OF THE GRANT AND REQUEST THE NAMED RECIPIENT TO SUBMIT A PROPOSAL TO PROVIDE THE GOODS OR SERVICES SPECIFIED IN THE APPROPRIATION ACT, OR BOTH, FOR WHICH THE APPROPRIATION OR ALLOCATION IS MADE. AT THE SAME TIME, THE DEPARTMENT MAY ISSUE A REQUEST FOR PROPOSALS FROM OTHER QUALIFIED PERSONS TO PROVIDE THE SAME GOODS OR SERVICES, OR BOTH, IN THE SAME AREA. THE DEPARTMENT SHALL CONTRACT WITH THE NAMED RECIPIENT UNLESS THE OFFICE OF THE GOVERNOR, WITH DUE REGARD FOR ANY LOCAL EXPERTISE OR EXPERIENCE AMONG THOSE MAKING PROPOSALS, DETERMINES THAT AN AWARD OF THE CONTRACT TO A DIFFERENT PARTY WOULD BETTER SERVE THE PUBLIC INTEREST. IF THE CONTRACT IS AWARDED TO ANOTHER PARTY THAN THAT NAMED BY THE LEGISLATURE, THE BASIS OF THAT ACTION SHALL BE STATED IN WRITING AT THE TIME THE GRANT IS ISSUED AND A COPY OF THE WRITTEN STATEMENT SHALL BE SENT TO THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE. A CONTRACT SHALL BE EXECUTED WITHIN 60 DAYS AFTER THE EFFECTIVE DATE OF THE APPROPRIATION OR ALLOCATION. THE PURCHASE OF THE GOODS OR SERVICES, OR BOTH, SHALL BE IN ACCORDANCE WITH AS 37.05.230(1)(C).

~~SEC. 37.05.217. GRANTS TO UNINCORPORATED COMMUNITIES.~~ WHEN AN AMOUNT IS APPROPRIATED OR ALLOCATED AS A GRANT UNDER THIS SECTION TO AN UNINCORPORATED COMMUNITY, IT SHALL BE DISBURSED AS FOLLOWS:

(1) WITHIN 45 DAYS AFTER THE EFFECTIVE DATE OF THE APPROPRIATION OR ALLOCATION, THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS SHALL NOTIFY THE GOVERNING BODY OF THE UNINCORPORATED COMMUNITY, IF ANY, THAT A GRANT IS AVAILABLE.

(2) THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS SHALL DETERMINE IF THERE IS A QUALIFIED INCORPORATED ENTITY IN THE COMMUNITY AREA THAT WILL AGREE TO RECEIVE THE GRANT AND ADMINISTER IT, SUBJECT TO TERMS GENERALLY APPLICABLE TO PRIVATE GRANTEEES. IF THERE IS MORE THAN ONE SUCH ENTITY, THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS SHALL SELECT THE MOST QUALIFIED AND THE GRANT SHALL BE AWARDED TO THAT INCORPORATED ENTITY FOR THE PURPOSES SPECIFIED IN THE APPROPRIATION ACT. HOWEVER, THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS SHALL GIVE PREFERENCE TO A NONPROFIT CORPORATION ORGANIZED BY A COMMUNITY FOR RECEIPT OF THE GRANT.

(3) IF THERE IS NO INCORPORATED ENTITY QUALIFIED TO RECEIVE THE GRANT, THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS SHALL ADMINISTER THE PROGRAM AS SPECIFIED IN THE APPROPRIATION ACT DIRECTLY OR THROUGH AGENTS OR CONTRACTORS WITH WHOM IT MAY CONTRACT IN THE COMMUNITY AREA.

EXEMPTION FROM REGULATIONS.

NOTWITHSTANDING THE ADMINISTRATIVE PROCEDURE ACT (AS 11.62), THE FISCAL PROCEDURES ACT (AS 37.05), AND THE EXECUTIVE BUDGET ACT (AS 37.07), A STATE AGENCY MAY NOT ADOPT REGULATIONS OR IMPOSE ADDITIONAL REQUIREMENTS OR PROCEDURES TO IMPLEMENT, INTERPRET, MAKE SPECIFIC, OR OTHERWISE CARRY OUT THE PROVISIONS OF AS 37.05.315 - 37.05.317 UNLESS REQUIRED BY THE FEDERAL GOVERNMENT FOR PARTICIPATION IN FEDERAL PROGRAMS.

SEC. 37.05.319. DEFINITIONS. IN AS 37.05.315 - 37.05.317 "PARTICIPATION" AND "ALLOCATION" HAVE THE MEANINGS SET OUT IN AS 37.07.120(4) AND (5).

EFFECTIVE DATE

\* SEC. 3. THIS ACT TAKES EFFECT IMMEDIATELY IN ACCORDANCE WITH AS 01.10.070(C).

CH008 DOCUMENT# 2 OF 3

CHAPTER NUMBER

CH008

SPECIAL INFO



# 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 Fischer  
Senator Bradley  
Senator Mulcahy  
Senator Sturgulewski

March 29, 1982  
1:35 p.m.

Beltz Room  
211 - Capitol

### Hearing:

SB 877 Relating to the staff of the Citizens' Advisory Commission on Federal areas in Alaska and providing for an effective date.  
SB 834 Continuing the existence of the Guide Licensing and Control Board.  
SB 840 Making a special appropriation for payment as a grant to the City of Cordova for a feasibility study of the Bering River coal field port and transportation system.

### SB 877

Senator Fahrenkamp stated that SB 877 was necessary to assure that staff employees of the Citizens' Advisory Commission are exempt from the State service.

Senator Mulcahy moved SB 877 with individual recommendations.

### SB 834

Mark Jensen, Chairman, State Guide Board, stated that the Board, consisting of three guides and four public members, was established in 1973. Jensen endorses SB 834, and although he endorses the idea of a review of Board action every few years, he feels that the sunset provision is not in the best interest of the State or the Board, as it creates "unnecessary upheaval."

Senator Sturgulewski referred to the audit report, and its recommendation that several changes be made in the Board's operation.

Jensen feels the Board has covered the major recommendations made in the audit.

Harry Traeger, Director, Division of Occupational Licensing, Department of Commerce and Economic Development, stated that the Code Revision Commission has Title 8 under consideration, and that the Administration will insist changes be made to satisfy the shortcomings outlined in the audit.

Senator Mulcahy moved SB 834 with individual recommendations.

SB 840

Edgar Blatchford, Chairman of the Board, Chugach Natives, Inc., spoke in support of SB 840, stating that the coal in the Bering River area is of high quality, and that the amount of money already invested by Chugach Natives is proof of their commitment to the project. They are requesting a one-time appropriation to study alternative sites for the port, the transportation system, and the financial and economic aspects of the project.

Carl Propes, Director of Lands and Natural Resources, Chugach Natives, Inc., stated that this appropriation is a proper role for the State, as a transportation system would cross State lands, and the port may be sited on State lands. Lack of State funding will probably delay the project at least a year. Carl emphasized that any State appropriation would not be interpreted as a commitment for further funding. He also stated that any funds appropriated will go to the City of Cordova, and the studies will be put out for competitive bid.

Senator Fische expressed concern over how the State could recoup its investment, and brought up the issue of a severance tax.

Phil Holdsworth, COAL, expressed support for SB 840, stating that the Bering River coal field has real potential. He emphasized that coal is a marginal industry in Alaska, and that imposing a severance tax on the gross product may be enough to kill the industry. Coal operators would instead favor a tax based on net income. Holdsworth explained that Bering River had not been developed sooner, because it is a geologically complex area, unlike other coal deposits in Alaska which have thick beds and are strippable. The Bering River coal is of a much higher quality, and has a market in Korea.

Senator Mulcahy moved SB 840 with individual recommendations.

The meeting was adjourned at 2:40 p.m.



# Alaska State Legislature

## SENATE Resources Committee

### Official Business

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

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

TO: Senate Resources Committee  
FROM: Senate Resources Committee Staff  
RE: Committee Hearing, 3/29/82  
DATE: March 26, 1982

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

- SB 834 Continuing the existence of the Guide Licensing and Control Board.
- SB 840 Special appropriation for payment as a grant to the City of Cordova for a feasibility study of the Bering River coal field port and transportation system.

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

TESTIMONY  
BY  
CHUGACH NATIVES, INC.  
ON  
HOUSE BILL No. 804  
BEFORE THE  
HOUSE TRANSPORTATION COMMITTEE  
JUNEAU, ALASKA  
MARCH 11, 1982

MADAM CHAIR, MEMBERS OF THE COMMITTEE, LADIES AND GENTLEMEN, MY NAME IS LIONEL L. DRAGE, AND I AM PRESIDENT OF CHUGACH NATIVES, INCORPORATED. CHUGACH IS ONE OF THE TWELVE ALASKA NATIVE REGIONAL CORPORATIONS FORMED UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT. WE SERVE THE AREA OF SOUTHCENTRAL ALASKA, RUNNING FROM THE LOWER COOK INLET AT ENGLISH BAY, EASTWARD TO ICY BAY NEAR YAKUTAT. THE COMMUNITIES OF CORDOVA, SEWARD, VALDEZ AND WHITTIER LIE WITHIN OUR REGIONAL BOUNDARIES, AS DO THE NATIVE VILLAGES OF CHENEGA, EYAK, TATITLEK, ENGLISH BAY AND PORT GRAHAM.

IT IS AN HONOR TO APPEAR BEFORE YOUR COMMITTEE TO DISCUSS THE MERITS OF H.B. 804, ENTITLED "AN ACT MAKING A SPECIAL APPROPRIATION FOR PAYMENT, AS A GRANT TO THE CITY OF CORDOVA, FOR A FEASIBILITY STUDY OF THE BERING RIVER COAL FIELD PORT AND TRANSPORTATION SYSTEM; AND PROVIDING FOR AN EFFECTIVE DATE." WE ARE ESPECIALLY GRATEFUL TO REPRESENTATIVE CATO FOR SPONSORING THIS LEGISLATION. WE EXPECT A SIMILAR, IF NOT AN IDENTICAL BILL, TO BE INTRODUCED SHORTLY ON THE SENATE SIDE UNDER THE SPONSORSHIP OF THE SENATE RESOURCES COMMITTEE.

H.B. 804 PROVIDES FOR A STUDY OF THE INFRASTRUCTURAL REQUIREMENTS OF THE PORT AND TRANSPORTATION SYSTEM FROM THE MINE TO THE PORT AT THE BERING RIVER COAL FIELD. THE PROPOSAL IS DESCRIBED IN MUCH GREATER DETAIL IN THIS PROPOSAL WHICH YOU ALL SHOULD HAVE RECEIVED COPIES OF. THIS PROPOSAL, DATED FEBRUARY OF 1982, WAS PREPARED UNDER OUR DIRECTION BY CH2M HILL, NORTHWEST, INC., IN BELLEVUE, WASHINGTON.

THE BERING RIVER COAL FIELD IS LOCATED SOME SIXTY MILES EAST OF CORNOVA IN THE EASTERN PORTION OF THE COPPER RIVER DELTA. IT WAS INTENSIVELY PROSPECTED BY MANUAL METHODS IN THE EARLY YEARS OF THIS CENTURY, AND, IN FACT, WAS THE LOCATION OF THE MAJORITY OF COAL CLAIMS AND LEASES IN THE ENTIRE STATE OF ALASKA. IN 1907, HOWEVER, IT WAS LOCKED UP IN THE CHUGACH NATIONAL FOREST BY PRESIDENT THEODORE ROOSEVELT, AND HAS NEVER SEEN SUBSTANTIAL PRODUCTION SINCE.

THE QUALITY OF THE COAL IN THE BERING RIVER FIELD IS SOME OF THE HIGHEST IN WESTERN NORTH AMERICA. IT RANGES FROM 12,000 TO 16,000 BTU'S, WITH REASONABLY LOW SULPHUR CONTENTS, AND AVERAGE MOISTURE, ASH AND VOLATILE MATTER. THE FIELD CONTAINS COAL RANGING FROM LIGNITE TO SUB-BITUMINOUS, BITUMINOUS AND ANTHRACITE.

THE HIGH QUALITY RANGE OF THE BERING RIVER COAL ENSURES THAT IT WILL NEVER GO WANTING FOR A MARKET IN THE PACIFIC RIM. NOR WILL IT COMPETE WITH THE LOWER QUALITY STEAM COALS FROM THE BELUGA AND NENANA FIELDS, WHICH MAY THEMSELVES HAVE DIFFICULTY FINDING GUARANTEED, LONG-TERM MARKETS.

CHUGACH NATIVES, INC. WAS FORTUNATE TO BE ABLE TO SELECT ONE-THIRD OF THE BERING RIVER FIELD UNDER THE TERMS OF THE ORIGINAL ALASKA NATIVE CLAIMS SETTLEMENT ACT. THEN, LAST YEAR UNDER THE CHUGACH REGION STUDY WHICH WAS MANDATED BY THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT, THE FEDERAL GOVERNMENT AGREED TO CONVEY TO US THE REMAINING TWO-THIRDS OF THE FIELD WHICH IS LOCATED WITHIN THE CHUGACH NATIONAL FOREST. THIS TRANSFER SHOULD TAKE PLACE SHORTLY, ONCE THE REMAINING AREAS OF DISAGREEMENT BETWEEN CHUGACH AND THE FEDERAL GOVERNMENT ARE IRONED OUT.

LAST SPRING, IN LIEU OF OUR LAND SETTLEMENT DIFFICULTIES, CHUGACH SUCCEEDED IN STRUCTURING AN AGREEMENT WITH A CONSORTIUM OF FOUR MAJOR KOREAN COMPANIES FOR THE EXPLORATION, DEVELOPMENT AND PRODUCTION OF BERING RIVER COAL. THESE COMPANIES CONSIST OF THE TWO LARGEST TRADING COMPANIES IN SOUTH KOREA: HYUNDAI AND SAMSUNG; AND THE TWO LARGEST COAL MINING COMPANIES AS WELL: DAESUNG AND SAMCHOK. CHUGACH FEELS VERY FORTUNATE IN HAVING PARTNERS OF THIS CALIBER AND MAGNITUDE IN APPROACHING AS SUBSTANTIAL A PROJECT AS THE BERING RIVER FIELD. DEVELOPMENT COSTS ARE ESTIMATED TO BE 150 MILLION DOLLARS.

MOREOVER, UNLIKE MOST OTHER NATURAL RESOURCE EXTRACTION VENTURES IN ALASKA, CHUGACH WAS NOT SATISFIED BY SIMPLY EARNING A ROYALTY PERCENTAGE FOR ITS PASSIVE PARTICIPATION IN THIS VENTURE. CONSEQUENTLY, WE HAVE A FULL 50% INTEREST IN THE PROJECT, WHICH WILL ENSURE OUR SHAREHOLDERS AND ALL OF THE CITIZENS OF ALASKA A LARGER SHARE OF THE ULTIMATE PROCEEDS OF THIS PROJECT.

DURING THE SUMMER OF 1981 OUR JOINT VENTURE DRILLED 10,000 FEET OF CORE IN THE BERING RIVER FIELD, OPERATING A TWENTY-MAN CAMP FOR 24 HOURS A DAY THROUGHOUT THE DRILLING SEASON. IN SPITE OF THE STRUCTURAL COMPLEXITY OF THE FIELD, WE WERE ABLE TO ESTABLISH PROBABLE RECOVERABLE RESERVES IN EXCESS OF 62 MILLION TONS, AND ANOTHER 28 MILLION TONS OF POSSIBLE RECOVERABLE RESERVES. THE 1981 PROJECT COST ON THE ORDER OF \$1.4 MILLION. OUR 1982 PLAN OF OPERATIONS CALLS FOR A SIMILAR INVESTMENT.

NOR HAS CHUGACH BEEN INACTIVE IN THE "OFF SEASON" THIS WINTER. IN ADDITION TO PREPARING THIS PROPOSAL FOR YOUR CONSIDERATION ON THE PORT AND TRANSPORTATION SYSTEM INFRASTRUCTURE FEASIBILITY STUDY, WE HAVE ALSO COMPLETED THE FOLLOWING STUDIES:

1. "PRELIMINARY ROUTING STUDY - BERING RIVER COALFIELDS", BY GOLDER ASSOCIATES IN SEPTEMBER OF 1981;
2. "PHOTOGEOLOGIC INVESTIGATION OF THE BERING RIVER COAL FIELD" BY GOLDER ASSOCIATES IN SEPTEMBER OF 1981;
3. "PRELIMINARY ECONOMIC PROSPECTUS FOR THE DEVELOPMENT OF BERING RIVER COAL FIELD", BY THE KOREA ALASKA DEVELOPMENT CORPORATION, IN SEPTEMBER OF 1981;
4. "GEOLOGY AND DRILLING REPORT OF BERING RIVER COAL FIELD, ALASKA" BY THE KOREA-ALASKA DEVELOPMENT CORPORATION, IN SEPTEMBER OF 1981;
5. "PRELIMINARY REGULATORY ANALYSIS FOR THE BERING RIVER COAL FIELD DEVELOPMENT" BY ERTEC NORTHWEST, IN DECEMBER OF 1981.

I BELIEVE THAT YOU CAN SEE THAT THIS VOLUME OF ON-GOING WORK INDICATES OUR COMMITMENT TO THIS PROJECT.

THE LEGISLATION BEFORE YOU REQUESTS A ONE-TIME APPROPRIATION OF SOME \$456,500 FOR STUDIES WHICH, WE BELIEVE, CONSTITUTE A LEGITIMATE STATE FUNCTION. THE STUDY CONSISTS OF THREE PARTS:

THE FIRST CONSISTS OF AN INVESTIGATION OF ALTERNATIVE SITES FOR THE PORT FACILITY. THIS WILL INCLUDE A MARINE GEOPHYSICAL SURVEY, A PRELIMINARY TERMINAL SITE EVALUATION, AND A DETAILED EVALUATION OF CONCEPTUAL LAYOUTS AT THE MOST PROMISING SITES. THIS PHASE IS PROJECT TO COST \$205,000.

THE SECOND PHASE WILL CONSIST OF A TRANSPORTATION SYSTEM INVESTIGATION FROM THE MINE SITE TO THE PREFERRED PORT LOCATION. THIS WILL INCLUDE A PRELIMINARY MODE AND ROUTE INVESTIGATION, A DETAILED EVALUATION OF ROUTE CONCEPTS, AND AN EVALUATION OF POTENTIAL HANDLING, STORAGE AND LOADING FACILITIES. THIS SECOND PHASE IS PROJECTED TO COST \$145,000.

THE THIRD PHASE OF THE STUDY WILL CONSIST OF A FINANCIAL AND ECONOMIC ANALYSIS. THIS WILL INCLUDE MARKET IDENTIFICATION, ECONOMIC EVALUATIONS AND FINANCIAL PROJECTIONS. THE DELIVERED COST OF BERING RIVER COAL WILL BE PROJECTED IN TERMS OF DOLLARS PER MILLION BTU'S. THIS WILL ALLOW IT TO BE COMPARED WITH THE DELIVERY COST OF OTHER COALS IN PACIFIC RIM MARKETS ON A DISCOUNTED CASH FLOW BASIS.

IN SUMMARY, WE BELIEVE THAT AN INVESTMENT ON THIS ORDER OF MAGNITUDE IS APPROPRIATE BY THE STATE OF ALASKA IN THE BERING RIVER COAL PROJECT AT THIS TIME. IT WILL SERVE TO COMPLEMENT CHUGACH'S SIZEABLE INVESTMENT IN THE EXPLORATION PROGRAM ITSELF. IT WILL

FURTHER ENSURE THAT THE QUESTION IN SOME PEOPLE'S MINDS OF WHETHER A PORT AT KATALLA OR CORDOVA, OR ELSEWHERE IN THE BERING RIVER AREA IS FEASIBLE, WILL BE ANSWERED.

WE BELIEVE THAT IT WOULD BE APPROPRIATE FOR THE CITY OF CORDOVA, AS THE LOCAL GOVERNMENT MOST SIGNIFICANTLY IMPACTED BY THE PROPOSED DEVELOPMENT, TO RECEIVE AND ADMINISTER THIS APPROPRIATION. IF THAT DOES NOT PROVE WORKABLE OUR SECOND CHOICE IS THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT.

PLEASE BE ASSURED THAT THIS INVESTMENT IN THE BERING RIVER PROJECT WILL NOT COMMIT THE STATE TO SPENDING UNTOLD MILLIONS OF DOLLARS ON IT IN THE FUTURE. HOWEVER, WHAT IT WILL DO, IS HELP TO SPUR ON A PROJECT WHICH WE ARE PURSUING VERY AGGRESSIVELY, BUT WHICH ONLY A YEAR AGO SOME SAID WOULD NEVER BE DONE. THE STATE OF ALASKA DOES HAVE AN APPROPRIATE ROLE TO PLAY IN THE DEVELOPMENT OF NATURAL RESOURCES OTHER THAN OIL AND GAS IN THE STATE, AND WE BELIEVE THAT THIS PROJECT IS A PRIME EXAMPLE OF HOW THE STATE'S FUNDS COULD BEST BE SPENT FOR THIS PURPOSE.

LEGISLATIVE SUMMARY

SB 840: "An Act making a special appropriation for payment as a grant to the City of Cordova for a feasibility study of the Bering River coal field port and transportation system; and providing for an effective date."

Sec. 1 Appropriates \$465,500 for a grant to the City of Cordova for a feasibility study of the Bering River coal field port and transportation system.

Sec. 2 The funds shall be disbursed in accordance with AS 37.05.315 - 37.05.319.

Sec. 3 Effective date: immediately.

---

SPONSOR: Resources Committee



Box 1210 602 Railroad Avenue  
Cordova, Alaska 99574  
Phone: (907) 424-3237  
or 424-3238

"The Friendly City"

February 9, 1982

James A. Poor  
Mayor

Perry D. Lovett,  
Manager

Donna M. Sherby,  
Clerk / Treasurer

Council Members  
Don Narrance  
Jay Bynum  
Richard Groff  
R.J. Kopchak  
Garry Purvis  
Joe Gunderson

Mr. Lionel L. Drage, President  
Chguach Natives, Inc.  
903 W. Northern Lights Blvd., Suite 201  
Anchorage, AK 99503

Dear Mr. Drage:

The City of Cordova has been informed of your corporation's proposal to the Legislature to fund a Preliminary Feasibility Study of the necessary coal port and related transportation system for the Bering River Coal Field.

Cordova will be the community most directly affected by the development of the Bering River field. We have much to gain by the sound and prudent development of the fields including the diversification of our economic base, increased employment, and the possibility of an alternate source of electric power.

I believe that the proposal which you have submitted to the Legislature for the Prefeasibility Study is appropriate at this time and a legitimate means of State involvement in this project. We look forward to working with your corporation in the development of the project.

Very truly yours,

Perry D. Lovett  
City Manager

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE  
Chugach National Forest  
2221 E. Northern Lights Blvd. Suite 238  
Anchorage, Alaska 99508

1920  
February 8, 1982



Carl A. Propes, Jr., Director  
Lands and Natural Resources  
Chugach Natives, Inc.  
903 W. Northern Lights Blvd., Suite 201  
Anchorage, Alaska 99503

Dear Carl:

In response to your February 8 letter to Walt Sheridan the Forest Service would be pleased to participate with the State, the City of Cordova, Chugach Natives, Inc., and others in the proposed study of Bering River coal fields transportation options should such a study be undertaken. We would not be able to provide any funds for the study, but would make available appropriate personnel. As you know, the Copper River Delta contains extremely high wildlife and fisheries values. The Alaska Lands Act at Section 501(b) recognized the importance of these resources and provided that the Copper River/Bering River/Rude River area be managed for the primary purpose of conserving fish and wildlife and their habitats.

A study such as you propose is an excellent way to begin examining options for development of the Bering River coal deposits in an environmentally sound manner--with specific emphasis on the fish and wildlife resources. We would welcome the opportunity to be a part of this effort.

Sincerely,

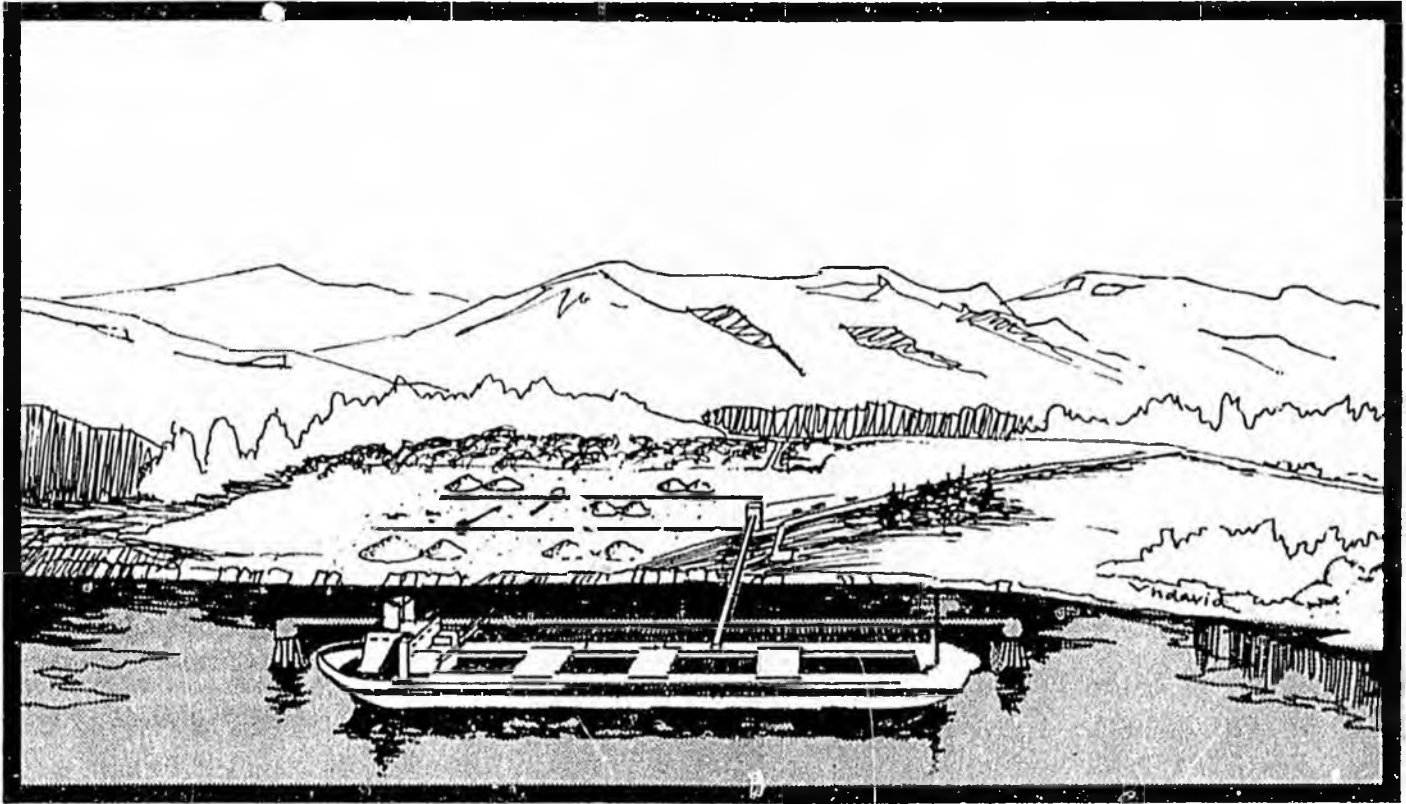
CLAY G. BEAL  
Forest Supervisor

# Proposal

To the Twelfth Alaska Legislature

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## BERING RIVER COAL FIELD PORT AND TRANSPORTATION STUDY



Prepared by  
**Chugach Natives, Inc./KADCO**

---

February 1982



**CHUGACH NATIVES, INC.**

903 WEST NORTHERN LIGHTS, SUITE 201 • ANCHORAGE, ALASKA 99503  
(907) 276-1080 TELEX 26-497

February 10, 1982

Jalmar M. Kerttula, President  
Alaska Senate  
Pouch V  
Juneau, Alaska 99811

Joe L. Hayes, Speaker  
Alaska House of Representatives  
Pouch V  
Juneau, Alaska 99311

Dear Gentlemen:

The attached proposal requests an appropriation of \$456,500 from the Alaska Legislature for a Prefeasibility Study of the Bering River Coal Field Port and Transportation System.

Chugach Natives, Inc., expended over \$1 million in exploration and drilling work in the Bering River Field in 1981, and a similar investment is scheduled for this year. The attached proposal details how the requested State funds fit into the overall development plan for this Coal Field.

Chugach believes that it is appropriate for the State to fund this portion of the project because it will serve to promote the development of Alaskan natural resources other than oil and natural gas. Moreover, benefits from the production of Bering River coal will accrue not only to Chugach's 2,100 shareholders, but also to Cordova through the diversification of that community's economic base and through the possibility of an alternative source of electric power. The revenue sharing requirements of the Alaska Native Claims Settlement Act will further guarantee that the profits from this mine will be distributed all over the State of Alaska.

This appropriation request was not included in the Governor's proposed capital budget because at the time that that was compiled we had not yet received the positive results of last summer's drilling program.

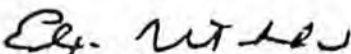
We should make clear that Chugach is not asking for this appropriation for itself to perform the requisite work. We do not even intend to bid on any of the work authorized by this appropriation, if it is authorized. We would prefer to see the funds channeled to the City of Cordova as the contact administrator, assuming that municipalities are awarded extraterritorial jurisdiction for port projects in pending legislation.

Our second preference for a funding entity would be the Department of Commerce and Economic Development, which has agreed to administer the project if the Legislature so decides.

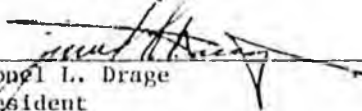
Your favorable consideration of this proposal would be most appreciated. Please call us if you have any questions concerning it.

Sincerely,

CHUGACH NATIVES, INC.



Edgar Blatchford  
Chairman of the Board

  
Lionel L. Drage  
President

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<b>Port and Transportation Study</b>	<b>5</b>
<b>Summary of Funds Requested</b>	<b>7</b>

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## EXECUTIVE SUMMARY

The high quality of Bering River coal has been known for 75 years. Drilling tests in 1981 reconfirmed this remarkably high quality and refuted the stereotype of Alaska coal as having high moisture content and low heating value. Probable recoverable reserves in the Bering River Coal Field have been identified in excess of 62 million tons; "possible" reserves are millions more. The precise extent of economically recoverable reserves, however, is currently undetermined. This uncertainty about the costs of Bering River Coal Field development is the reason for this proposal.

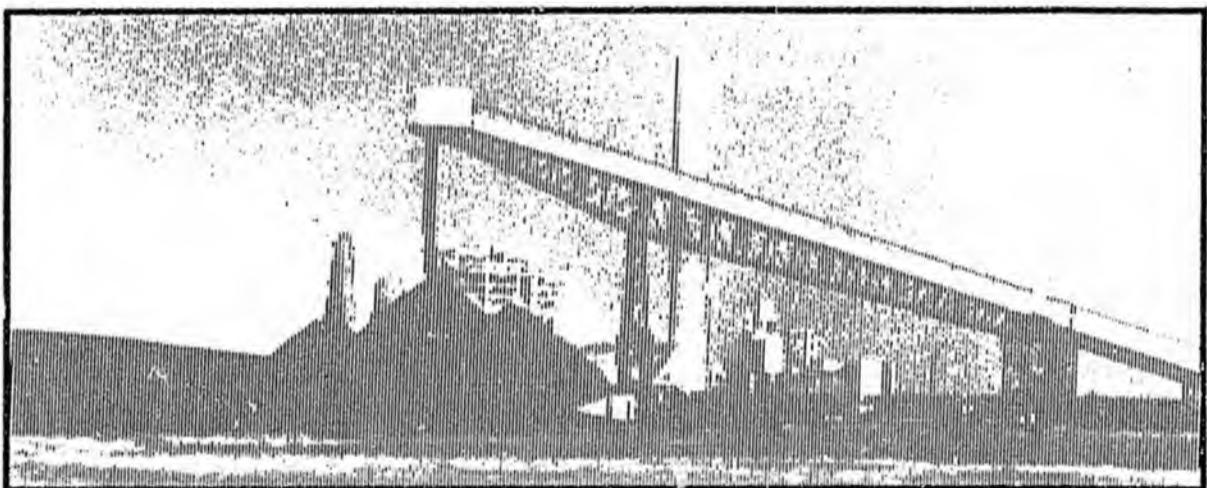
If the coal can be marketed profitably to Pacific Rim countries, the benefits to all Alaskans will be immense. Chugach Natives, Inc., has worked very hard for over a year to find compatible partners and to carry out preliminary studies and test drillings. All results have been positive, but a number of questions remain.

Our proposed Coal Port and Transportation Study will answer many, but not all, of these questions. It will provide information on whether more detailed engi-

neering and environmental analyses are potentially worthwhile, or whether mining and transporting the coal will simply be too costly.

This proposal requests funding for \$456,500 for this essential study. Chugach Natives, Inc., and KADCO, its joint venture partner, have already spend \$1 million and are committed to spending another million dollars in the coming year. This request represents a relatively small, although vital, part (15 percent) of the initial planning and conceptual phase budget of roughly \$3 million for 1981 through 1984.

For this investment, the state of Alaska will receive a straight answer to a question with potentially great significance to the state as a whole: Are the port and transportation concepts for the development of the Bering River Coal Field technically and economically viable, and are the requirements compatible with the high environmental standards of the state and Chugach Natives, Inc.?



## INTRODUCTION

The Chugach region is located along 450 miles of the Alaska coast from lower Cook Inlet on the west to Icy Bay on the east. As the map below shows, the region includes the cities of Cordova, Seward, Valdez, and Whittier.

There are approximately 2,100 shareholders of Chugach Natives, Incorporated (CNI), one of the 12 Alaska Native regional corporations created under the Alaska Native Claims Settlement Act (ANCSA). Five village corporations, also created by this act, are located within this region. They are the Chenega, English Bay, Eyak, Port Graham, and Tatitlek village corporations.

The Chugach Region is a "melting pot" of Alaska Native cultures. The ancestry of the shareholders includes Aleut, Chugach Eskimo, and Eyak Indians. The Chugach people have occupied the Prince William Sound area for thousands of years.

The continued existence and livelihood of the Chugach people depends on a diversified economy as well as a clean environment. Many shareholders of CNI and other Chugach region residents are fishermen who depend on the continuing prosperity of the commercial salmon harvest. CNI's largest investment to date, the Orca seafood processing plant in Cordova, supports the region's involvement with this important industry.

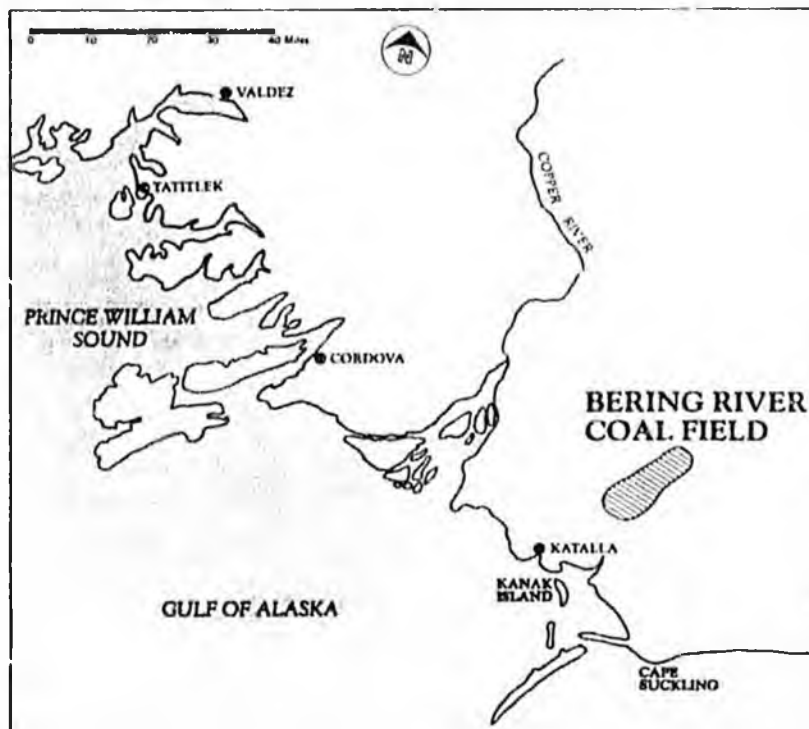
CNI promotes development that will broaden and stabilize the economic base while not jeopardizing the seafood industry.

The Bering River Coal Field Port and Transportation Study will be a major step toward diversifying and strengthening the economic base of the Chugach region. Development of the Bering River Coal Field will benefit:

- The 2,100 shareholders of Chugach Natives, Inc., through investment of their capital in a profitable venture
- The Cordova area economy, through the creation of hundreds of job opportunities and the diversification of the economic base
- The residents of Cordova, through the possible availability of electrical power from a mine-mouth power plant
- All Alaska Natives, through the revenue-sharing provision of the ANCSA
- The state of Alaska, through industrial growth and reduced regional dependence on state aid

### Objective

The development of the Bering River Coal Field, like any other major project, will be expensive. For development to occur, many very difficult technical and economic questions must be answered and environmental concerns must be addressed. The proposed



Site Map

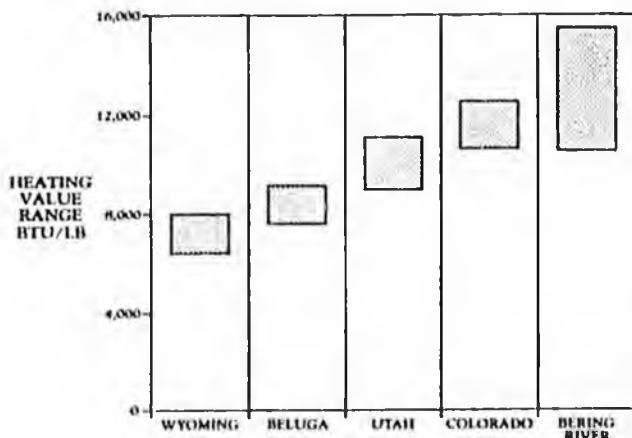
study will provide many, although admittedly not all, of the needed answers. It will attempt to answer enough questions about the potential port sites and transportation routing alternatives so that reasoned decisions can be made on whether or not to proceed with the next phase of preliminary engineering and permitting.

## History

The commercial success of the Bering River Coal Field development seems probable based on the history of the field, the quality of the coal resource, and the interest already shown by potential buyers. The Katalla-Bering River area possessed the most valuable known fuel resources in Alaska until the development of the Cook Inlet oil and gas fields in the late 1950's and the North Slope discoveries in the late 1960's. The Bering River Coal Field was the first coal field discovered in Alaska, and 4 out of every 5 of the mining claims in the 1905 "coal rush" were made in this field. Regional development ceased in about 1916, however, for political reasons.

## Coal Quality

The coal found in the Bering River field has long been recognized for its high quality. Alaska coal is, unfortunately, widely thought to be of lower quality than most other coals. This is a definite misconception in the case of Bering River coal, as the figure below demonstrates. Bering River coal compares very favorably with coal from Colorado, Utah, and Wyoming, as well as with coal from the Beluga fields. This fact is very encouraging because the Pacific Rim buyers of these other coals would compare Bering River coal against them.



Comparison of  
Typical Coal Heating Values

## Coal Reserves

Alaska may actually have more coal resources than the rest of the western United States, although actual mineral reserves are still anybody's guess due to limited drilling information. Over 62 million tons of recoverable reserves were identified in the Bering River Coal Field following a drilling program conducted in the summer of 1981. Another 28 million tons are estimated as possibly recoverable reserves. Additional coal reserves will be better defined in 1982 and thereafter. Estimates of "recoverable" and "potential" reserves have invariably proven low throughout the country.

The size of CNI's land selection in the Bering field, the amount of land under coal exploration license, is slightly under 70,000 acres.

## Markets

Far East countries are developing into good markets for Alaska coal. These countries are expected to use nearly 200 million tons of thermal coal by the year 2000. The United States is forecast to export over 50 million tons of steam coal annually to Asian countries by the year 2000.

## Chugach Natives, Inc. and KADCO Agreement

The proposed Coal Port and Transportation Study follows more than a year of planning activity by CNI. In April of 1981, CNI executed an agreement for exploration and development in the Bering River Coal Field with a consortium of four major Korean companies (KADCO). The consortium includes the two largest Korean trading companies, Hyundai Corporation and Samsung Company, Ltd.; and the two largest Korean coal mining companies, Daesung Consolidated Coal Mining Company, Ltd., and Samchok Consolidated Coal Mining Company, Ltd.

In May of 1981, this joint venture began an aggressive core drilling program under the first Federal coal exploration license ever issued in Alaska. CNI and KADCO are pleased with the results of the 1981 program, and in January of 1982 the partners signed an agreement to continue with a similar drilling program during 1982.

CNI has valid land selection rights to the eastern third of the Bering River Coal Field, in the Carbon Mountain area, under the ANCSA. CNI was offered title to the two thirds of the field now in the Chugach National Forest by the Federal government as part of its land settlement in the Chugach Region Study (Section 1430 of the Alaska National Interest Lands Conservation Act of December 2, 1980.)

# BERING RIVER COAL FIELD DEVELOPMENT PLAN

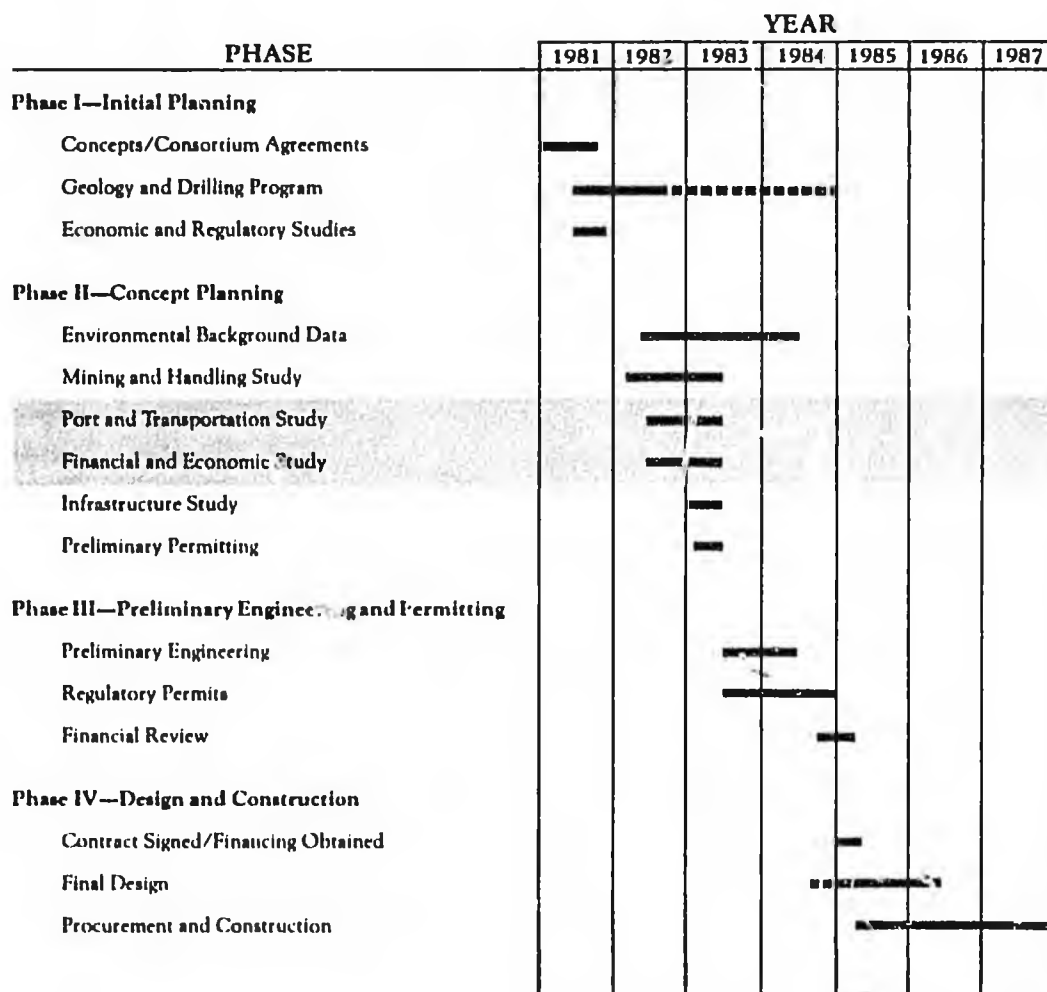
## An Overview

The proposed Coal Port and Transportation Study follows more than a year of preliminary studies, test drilling, and consortium negotiations. A preliminary economic analysis, completed by KADCO in September 1981, concluded that economically recoverable coal resources are located in the Bering River field.

On the basis of these preliminary studies, Chugach Natives, Inc., and KADCO will continue development planning during 1982. A detailed market study is underway that will provide necessary baseline information for the Coal Port and Transportation Study. A number of technical, economic, and environmental issues were identified in the previous studies. The proposed study will provide many of the needed answers.

By following the development plan shown below, CNI can bring the Bering River Coal Field into production in a cost-effective manner. The development plan allows for periodic reappraisals of viability and a fast answer to the question of whether development of the coal field can or cannot be accomplished in a technically, environmentally, and economically sound manner.

As shown below, the Coal Port and Transportation Study follows initial studies that clearly indicated that further analysis of port and transportation alternatives is now warranted. This study will determine the advisability of proceeding with the remaining, more expensive, development phases. Although shown below as a separate analysis, the financial and economic analysis is considered in this proposal to be part of the Coal Port and Transportation Study.



Bering River Coal Field Development Plan

## PORT AND TRANSPORTATION SYSTEM STUDY

The Coal Port and Transportation Study will provide many of the answers to key questions such as: Are port sites adequate? Can transportation corridors be created and maintained? What is the most cost-effective handling and transport system from mine to port?

The study has three main elements: a marine terminal investigation, a transportation systems investigation, and a financial and economic analysis. The terminal investigation includes three parts:

- A preliminary identification and assessment of terminal sites
- A marine geophysical and limited landside survey
- A detailed evaluation of conceptual layouts at the most promising sites

The transportation systems investigation will include:

- A preliminary mode and route evaluation
- A selection and detailed evaluation of a route plan
- A storage handling and loading evaluation

The financial and economic analysis of the overall development concept will be performed concurrent with the study. It will include:

- A market study to identify coal quantities, qualities, and likely vessel size
- A financial study to identify the ability of Bering River coal to compete with other world coal sources (such as Utah and Colorado) in the Asian markets, in terms of delivered cost per million Btu
- An economic study to identify the economic benefits and costs of coal field development

### Transportation System Investigation

#### Objective

The transportation system investigation will address the technical, economic, and environmental aspects of transporting coal from the Bering River Coal Field to terminal sites in Kavalla and Cordova.

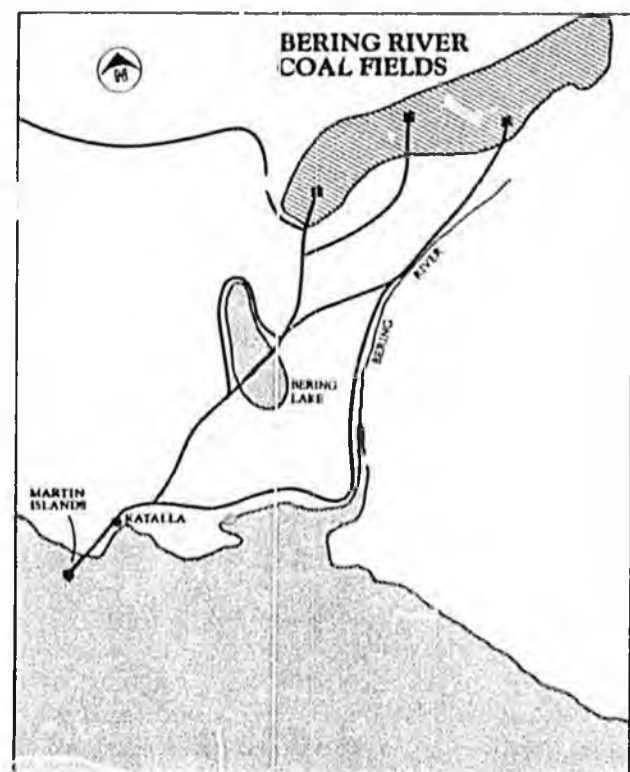
#### Scope

Design criteria for transporting coal via the modes of rail, truck, conveyor, and slurry will be defined first. These criteria will then be applied to those routes identified in preliminary studies conducted in 1981, shown on the figure at right. The selection of route and mode will require: (1) a reconnaissance survey of soil, drainage, relief, and geology; (2) a comparison

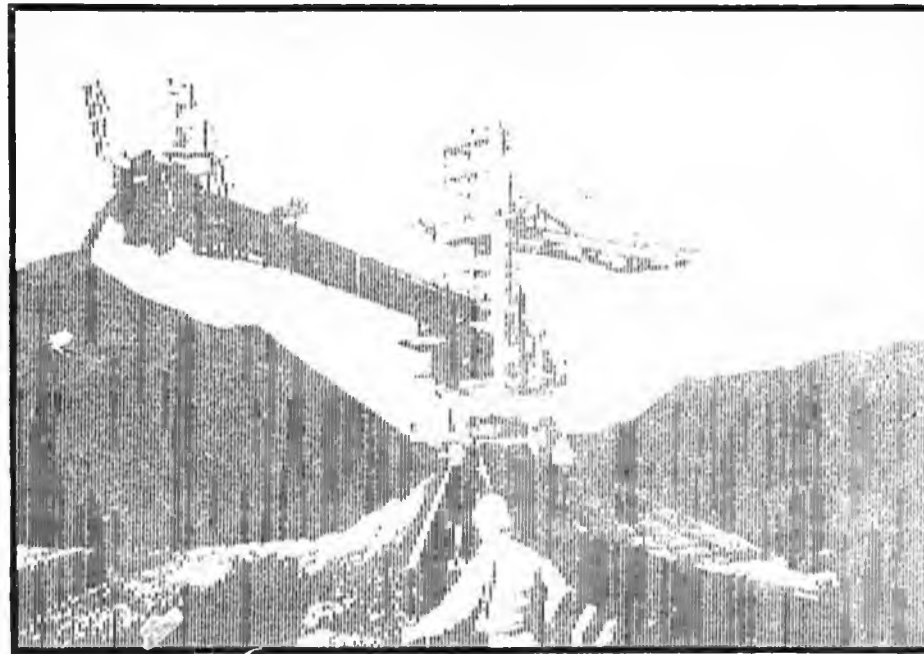
of construction, operation, and maintenance costs for each mode and route; and (3) a comparison of environmental impacts. This element of the study will evaluate: whether grades identified in the design criteria for each mode can be created and maintained; adequacy of soil conditions along the identified routes; effects on flora and fauna; energy requirements and sources; borrow material quantities and sources; effects of weather; and drainage characteristics for each mode and route alternative.

The location and layout of the coal terminal, including a storage and reclamation system, will also be analyzed. Topography, soil conditions, geologic hazards, waste material disposal requirements, storage requirements, power access, site rehabilitation requirements, cost, and environmental effects will be considered.

The optimal mode and route will be selected on the basis of technical, economic, and environmental criteria and conceptual plans and cost estimates will be prepared for them.



Transportation Routes



## Marine Terminal Investigation

### Objective

The marine terminal investigation will evaluate the location and developmental requirements of ship moorage and loading sites in the Katalla-Cordova region.

### Scope

A preliminary analysis of available terminal sites in the Katalla-Cordova region will identify the most likely sites for detailed evaluation. Criteria will be identified for: receiving coal via rail, road, conveyor, and slurry; storing and preparing coal upland from the terminal; and loading barges and deep-draft vessels. These criteria will be used to evaluate the available sites regarding their size and topography, drainage, flora and fauna, soils, geology, bathymetry, currents, waves, tides, sedimentation, and navigation.

More detailed evaluations and site plans will be prepared for the most likely sites. The decision criteria will be further refined for the transportation, storage, and preparation systems identified as most cost-effective in the transportation study. A marine geophysical survey will be conducted to provide necessary data on subsurface contours and depth to bedrock. This survey will show whether the sites will support piling and other port structures, and whether dredging will be required. Site-specific climatological and current data will be acquired using an automatic weather station and current meters.

Conceptual layouts, cost estimates, and maps of topography, soil conditions, geologic hazards, and envi-

ronmentally sensitive locations will be prepared for selected terminal sites. A final terminal site recommendation will be made on the basis of these considerations.

## Financial and Economic Analysis

### Objective

The financial and economic analysis will provide basic data, such as the required annual throughput, that are needed to optimize the port and transportation system design.

### Scope

The analysis will be based on available published data verified through interviews with exporters, trading companies and shipping companies. It will provide an answer to the key question of whether Bering River coal reserves are economically recoverable.

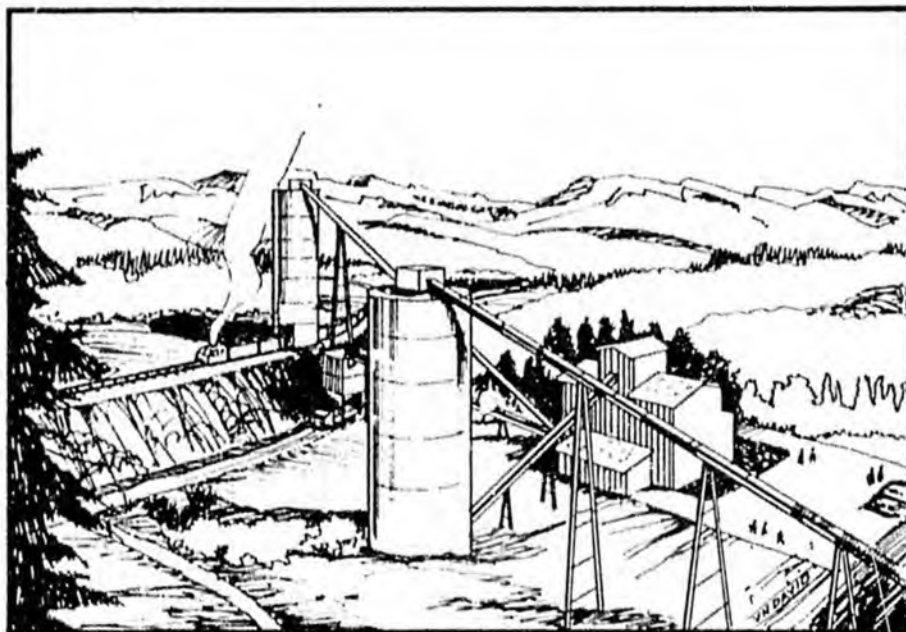
The financial and economic analysis will project the cost of Bering River coal in dollars per million Btu. Ocean transport and receiving facility handling costs will be provided by KADCO. The delivered cost of Bering River coal will then be compared with the projected costs of coal delivered from other West Coast states and Australia.

The economic evaluation of the development will include a comparison of net benefits and costs to the state of Alaska, all Alaska Natives, the residents of the Chugach region, and the shareholders of Chugach Natives, Inc. A discounted cash flow analysis will be used to compare benefits and costs.

## SUMMARY OF FUNDS REQUESTED

Funding of \$456,500 is requested for this study. Actual funding for administrative support may change depending upon the requirements of the sponsoring agency. Chugach Natives, Inc., and KADCO have already spent \$1 million, and are committed to spending another million dollars in the coming year.

Study Element	Cost
<b>Port and Transportation Study</b>	
Transportation Systems Investigation	
Preliminary Mode and Route Investigation	\$ 25,000
Detailed Evaluation and Route Concepts	65,000
Handling, Storage, and Loading	
Evaluation	<u>55,000</u>
Subtotal	145,000
Marine Terminal Investigation	
Preliminary Terminal Site Evaluation	30,000
Marine Geophysical Survey	65,000
Detailed Evaluation and Site Concepts	<u>110,000</u>
Subtotal	205,000
Financial and Economic Analysis	
Market Identification	25,000
Economic Evaluation	20,000
Financial Projections	<u>20,000</u>
Subtotal	65,000
Total Port and Transportation Study	415,000
Administration (10 Percent)	41,500
<b>TOTAL FUNDS REQUESTED</b>	<b>\$456,500</b>



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**This document was prepared in consultation with  
CH2M HILL Northwest, Inc.  
Anchorage, Alaska**

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# COMMITTEE REPORT

## SENATE

3/9/82

FURTHER: *at 10:15*

Date: 3/2/82

Mr. President:

The Committee on RESOURCES has had SR 842  
surface coal mining

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for SR 842  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

Don Wilton  
Bob Wickert  
...  
\_\_\_\_\_  
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MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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\_\_\_\_\_  
CHAIRMAN

# Issue Brief



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SURFACE MINING: FEDERAL REGULATION

ISSUE BRIEF NUMBER IB74074

AUTHOR:

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## ISSUE DEFINITION

It is estimated that during 1975, 54.7% (350.2 out of 640 million tons) of coal produced in the U.S. was mined by the controversial surface-mining method, resulting in disturbance to more than 1000 acres of land each week. While there are numerous environmental and social costs associated with unregulated surface-mining, this method is a less expensive, safer, and quicker way of obtaining large tonnages of coal. The energy crisis has provoked a need for easy access to energy sources, and coal accounts for nearly 90% of domestic fossil fuel reserves. As a result, certain power-generating facilities with cleaner but domestically scarce gas and fuel oils have been asked recently to convert or revert to coal-fired operations. The overriding policy issue is how the Government can regulate surface mining in environmentally acceptable ways.

## BACKGROUND AND POLICY ANALYSIS

Stated in simple terms, surface mining removes the overburden consisting of topsoil, rock, and other strata that lie above mineral or fuel deposits. After extraction of the coal or other desired material, the overburden may be replaced. In practice, however, the process is considerably more complex. In area strip mining -- usually practiced on flat terrain -- a trench is made through the overburden to expose a portion of the deposit, which is then removed. As each succeeding parallel cut is made, the overburden is deposited in the cut just previously excavated. In contour strip mining, most commonly practiced in rolling or mountainous countryside, the overburden is removed by making a series of shelves along hillsides. The vertical wall left in the hillsides resulting from this type of excavation can be as great as 100 feet. At times, operators have cast the overburden over the edge of the shelf creating landslide hazards. This is one reason why contour surface mining in mountainous areas has been severely criticized by environmentalists, many of whom advocate banning this method on slopes greater than 20 degrees.

Strip mining first started before World War I, but it did not become a significant technology for mining coal until after World War II. By the early 1960s, more than 30% of this country's coal was produced by surface mining. Although 50% of the country's coal is now obtained by surface mining, it has been estimated that only 5% of the estimated 3 trillion tons of coal resources in the United States is close enough to the surface to lend itself to stripping procedures.

Compared to underground methods, surface mining offers distinct advantages. It provides safer working conditions, usually results in a more complete recovery of the deposit (90% recovery in area stripping vs. 55% recovery in underground mines), and is generally cheaper in terms of cost-per-unit of production. The Bureau of Mines estimates 1975 f.o.b. mine values for coal as follows:

Eastern surface=\$18/short ton  
Eastern underground=\$20/short ton  
Midwestern surface=\$11/short ton  
Midwestern underground=\$12-13/short ton

Environmental costs of stripping, however, are high. It has been estimated that surface mining destroys outdoor recreation resources worth \$35 million a year. Water supplies are polluted through acid drainage, farm lands are adversely affected, and natural beauty is degraded. Environmentalists feel that much of this strip mining is unnecessary. A new underground mining technology called longwall mining, developed in Western Europe, permits 80-95% recovery of coal, a rate equal to that of area surface mining.

During the debate surface mining proponents conceded that stripping produces environmental damage in the short term; but, they argued that it can be limited and repaired through reclamation. Estimates for the cost of thorough reclamation range from just a few cents to several dollars per ton of coal, depending upon the degree of reclamation and the total tonnage of resource removed from a given area (reclamation costs per ton are extremely sensitive and inversely proportional to the thickness of the coal vein). Reclamation is more feasible and less costly for area mines in rolling or flat land than for contour mines in mountainous or hilly terrain. This could presage a shift in strip mine operations from the eastern Appalachian coal fields to the central and western fields. However, the Environmental Protection Agency has indicated that the feasibility of adequate reclamation in the semiarid western lands has not yet been demonstrated satisfactorily.

In the United States, meaningful reclamation is being done for most currently mined lands, following the pattern of success reported in Great Britain and West Germany. In a recent report to the Senate Committee on Interior and Insular Affairs, however, the Council on Environmental Quality calculated that of the four million acres of land that have been disturbed by surface mining to date, more than half of them lie unreclaimed. Since much of this land was disturbed prior to the promulgation of any State surface mining regulations, the companies involved are no longer liable for its reclamation.

At issue in the surface mine debate is who should regulate the mining and reclamation process. Until recently, surface mining was relatively unregulated, although reclamation laws were on the books in most States by the early 1960s. Environmental lobbies feel that State laws are largely unenforced, ambiguous, hampered by lack of funds and personnel, and, in general, too limited in coverage to provide a comprehensive remedy for the problem. Advocates of stripping, in contrast, feel that Federal rules would undermine State and local authorities that propose rational growth and land development.

Another issue arises from the fact that 40% of the coal deposits are on lands where the Government owns the mineral rights. (Moreover, these lands contain 85% of the supply of environmentally desirable, low-sulfur coal.) Coal and utility companies began buying up leases on coal rights in the Northern Great Plains in the mid-1960s. Thus, re-examination of Federal leasing policies for coal is crucial.

There has been strong public and congressional support for Federal legislation to control strip mining. Congress experienced extended delays in trying to pass a strip mining bill. Control bills were introduced as early as 1940, and have been introduced in every Congress since 1960. In 1972, the House passed a bill, but the Senate did not act. In December 1974, a surface mining bill, S. 425, was finally agreed upon by both houses, but was pocket vetoed by President Ford at the end of the 93d Congress. The President contended that the legislation would hinder coal production and be

inflationary. Since the fuel shortages have prompted a reappraisal of surface mining legislation, the Ford Administration was concerned that any restrictions on surface mining will impede increased coal production. The issue, then, is one of balancing energy needs and environmental costs.

Action on the surface mining issue in the 94th Congress included the introduction of several new bills, some of which were virtually identical to the joint conference bill, S. 425, of the 93d Congress. Bills S. 7 and H.R. 25 were the reintroduction of S. 425 (93d Congress). S. 652 and its companion bill H.R. 3119 were the Administration's proposals. In a statement issued by the Administration, 27 changes in the joint conference bill (S. 425; 93d Congress) were suggested; 8 of them were classified as critical. Among these 8 changes were decreases in the per-ton tax on mined coal to establish an abandoned lands reclamation fund, changes in the stream siltation standards, and definition of certain ambiguous terms in the joint conference bill and its successors, S. 7 and H.R. 25.

Secretary of the Interior Rogers C.B. Morton offered a statement on S. 7 and H.R. 25 to the House Interior Committee on Feb. 18, 1975 in which he estimated coal production losses to be from 48 to 141 million tons during the first full year of implementation of either strip mining bill. The same statement was presented to the Senate Interior Committee on Feb. 20, 1975 for Mr. Morton by Assistant Secretary Jack Carlson.

Markup sessions for S. 7 and H.R. 25 were held during the week of Feb. 24, 1975. A joint conference met to consider the bills on Apr. 16, 18, 23, and finished their work Apr. 29. The joint conference bill then went before the House and Senate for final approval.

Major provisions in the surface mining regulation proposal included the following: (1) allowance of surface mining in alluvial valley floors, where such activities will not jeopardize irrigated agricultural activities; (2) prohibition of surface mining in National Forests; (3) imposition of a tax in the amount of 35 cents/ton on surface-mined coal and 10 cents/ton on deep-mined coal, for the establishment of an abandoned mine reclamation fund; (4) exemption of anthracite coal mines from the provisions of the bill; and (5) elimination of special unemployment compensation for persons dislocated from their jobs by the administration and enforcement of the bill's provisions.

On May 20, 1975, President Ford vetoed H.R. 25, the Surface Mining Control and Reclamation Act of 1975, citing unacceptable levels of lost coal production and unemployment as two of the primary reasons for returning the measure to Congress. Sponsors of the bill asked Administration officials to appear on June 3, 1975, before a Joint Committee consisting of members of the House Subcommittee on Mines and Mining and the House Subcommittee on Natural Resources. The Administration was asked to verify these projected unemployment and production loss figures. Members of the Senate Subcommittee on Natural Resources were invited to participate in the proceedings.

On June 11, 1975, H.R. 25 received override consideration in the House. The major issue in the consideration was the accuracy of the Administration's assessment of the potential impact of the legislation on coal production and industry employment, which had been offered in testimony before the House Interior Committee, June 3, 1975, by Secretary of Interior Morton and PEA Administrator Zarb. Although Administration officials were unable to substantiate their impact estimates to the satisfaction of many members, the Committee was unable to produce figures to refute those of the

Administration. The floor debate concluded with neither the proponents nor opponents of the bill being able to prove their own impact estimates or disprove those of the opposition. The final vote narrowly failed to post a two-third's majority to override the President's veto. The vote was 278 to 143, with 1 voting "present," and 12 not voting.

On Feb. 24, 1976, the House Interior Committee voted 28 to 11 to report H.R. 9725, the Surface Mining Control and Reclamation Act, to the full House. The bill was virtually identical to H.R. 25, its predecessor of the 94th Congress, 1st session, which was vetoed by President Ford. Technical changes by the Committee were made to correct typographical errors in the bill and the language of Section 510 (b) (5), which restricted mining in alluvial valley floors west of the one hundredth meridian west longitude, was altered to exclude mines producing coal in commercial quantities one year prior to the date of enactment from the provisions of the Section. Further consideration of H.R. 9725 was tabled by the House Rules Committee on Mar. 23, preventing the bill from being considered by the full House. The action was seen as a major victory for the Ford Administration and the coal industry, which have fought congressional efforts to institute Federal standards to govern the reclamation of lands disturbed by the surface mining of coal.

#### Senate legislation - 96th Congress

S. 1403 (Mr. Jackson, by request)

As introduced: Legislation to amend the following section of the Surface Mining Control and Reclamation Act, P.L. 95-87.

Section 502(d) extends the maximum period during which the State or Federal regulatory authority shall process and grant or deny a surface mining permit from forty-two to forty-nine months;

503(a) extends the period for submission of State programs to the Federal agency from 18 to 31 months;

504(a) extends the period for the promulgation and implementation of a Federal program for a State from 34 to 41 months following the date of enactment of the Act.

Strikes the following sentence from the Act: "If State compliance with clause (1) of this subsection requires an act of the State legislature, the Secretary may extend the period of submission of a State program up to an additional six months."

In action on the bill, the Senate Energy and Natural Resources Committee made the following changes including the controversial "Rockefeller" amendment:

The 42-month period contained in section 502(d) of the Act was extended from the originally proposed 49 months to 54 months;

The 34-month period contained in section 504(a) of the Act was extended from the originally proposed 41 months to 46 months.

"Rockefeller" amendments:

Strike the following language from sections 503(a)(7) and 701(25): 503(a)(7) strike the phrase "regulations issued by the Secretary pursuant to"; 701(25) strike the phrase "and regulations issued by the Secretary pursuant to this act."

The "Rockefeller" amendments would allow the State to assume enforcement of surface mining reclamation by promulgating regulations that are consistent with the provisions of the Act without those regulations being consistent with the regulations promulgated by the Secretary of the Interior.

In the Committee, additional language was added to S. 1403 which allowed for the implementation of a Federal lands program coincident with the implementation of a State program pursuant to section 503 or a Federal program pursuant to section 504 of the Surface Mining Act.

Minor changes were also made in the Title of the Act to accommodate the proposed changes of the "Rockefeller" amendments to sections 503(a)(7) and 701(25).

All of the amendments made in Committee remained unchanged in Senate floor action on the bill with the following exception:

Section 502 of the Surface Mining Control and Reclamation Act of 1977 was amended by adding the following language:

"(g) Notwithstanding any other provision of this section, each State shall, to the greatest extent possible, have principal responsibility for the inspection of mines during the period of time prior to the submittal of State plans for approval. Such responsibility shall remain with each State until such time as the Secretary shall furnish personnel assistance to the States in carrying out this responsibility upon request of the State regulatory agency."

As amended, S. 1403 passed the Senate Sept. 11, 1979, and was referred to the House Committee on Interior and Insular Affairs.

#### House legislation - 96th Congress

H.R. 4728: A bill to amend the Surface Mining Control and Reclamation Act of 1977.

H.R. 4728 is identical to S. 1403 (as introduced) and provides for extensions of the deadlines for the submission of State programs and approval of those programs, but does not provide for any changes in the Act that would release the States from promulgating regulations consistent with those promulgated by the Secretary of the Interior.

#### Latest Action

As of Oct. 10, 1979, the House Interior Committee had scheduled no action on either of the bills.

By request, the General Accounting Office examined several internal memos of the Office of Surface Mining written during the period that S. 1403 was being considered by the Senate. Many of these memos were printed in the Congressional Record of Mar. 27, 1980, pages S3104 to S3115. The information

in the memos suggests numerous improprieties by the Office of Surface Mining including direct lobbying of Congress in order to defeat S. 1403, using appropriated funds to muster support among several environmental organizations against passage of the bill, and trying to influence congressional support against the legislation by selectively allocating OSM State contract funds.

The Department of Justice, at the request of Congress, has supplied the Federal Bureau of Investigation with copies of the memos so that the Bureau might look into the possibility of criminal misconduct.

### Regulation

Virtually all of the provisions of S. 1403, passed by the Senate during the first session of the 96th Congress and referred to the House Interior and Insular Affairs Committee, are now attached as amendments to the Maritime Tonnage Measurement Act (H.R. 1197). The amendments would eliminate the requirement that the individual States, in order to assume primacy of surface mining regulation within their boundaries, enact legislation that is consistent with the regulations promulgated by the Secretary of the Interior, through the Office of Surface Mining. Instead, the States would only be required to provide regulation of the industry which is consistent with all of the provisions of the Federal Surface Mining Control and Reclamation Act of 1977, P.L. 95-87. In addition to this change in the Federal law, three other amendments to the surface mining law were included in H.R. 1197. The first was intended to further protect alluvial-valley floor areas in the Western United States, the second to protect prime farmland in the Midwestern and Eastern part of the U.S., and the third would allow surveyors to be eligible to prepare the mining and reclamation plans, in addition to registered professional engineers and geologists, which is currently the case under the existing law.

### LEGISLATION

#### P.L. 95-87 (H.R. 2)

Regulates surface coal mining operations through a permit program administered by the Secretary of the Interior. Requires applicants to meet minimum environmental protection performance standards. Allows States to establish surface mining control programs at least as stringent as minimum Federal standards. Includes provisions to fund mineral resources research programs and to provide for reclamation of abandoned mine sites.

H.R. 2 was reported, with amendment, by the Committee on Interior and Insular Affairs on Apr. 22, 1977. Passed the House, amended, on Apr. 29, 1977, by a vote of 241-64. Passed the Senate, amended, in lieu of S. 7, on May 20, 1977, by a vote of 57-8. Signed into law (P.L. 95-87) on Aug. 3, 1977.

As it was introduced, H.R. 2 was very similar to H.R. 13950, the last bill to receive any action in the 94th Congress. Amendments were made by the House Interior Committee to five of the seven titles in the bill. The most substantive changes were made to Title 5, including the following:

1. Section 503(a). Non-Federal land.  
This subsection was amended to make it clear that a

State normally has jurisdiction over surface mining on non-Federal lands under the Act unless the State enters into an agreement with the Secretary to exercise jurisdiction over Federal coal pursuant to sections 521 and 523.

This section remained essentially the same in the final version of the bill. (This language is also consistent with tentative arrangements which have been made between the States of Wyoming and Colorado and the Department of the Interior.)

2. Section 510 (b) (3). Hydrologic impacts.

Under H.R. 2, prior to approval of a permit application, the regulatory authority is to make an assessment of the cumulative hydrologic impact of all mining in the area of concern. The committee amendment clarifies the test to be applied to this review. The words "significant irreparable offsite" damage have been deleted in favor of language that specifies that the mine is to be designed to prevent damage to the hydrologic balance outside the permit area.

The language in the final version of the bill is essentially the same.

3. Section 510 (b) (5). Alluvial valley floor modification.

H.R. 2 and the committee amendment contain a prohibition on mining of alluvial valley floors--areas of agricultural significance in the Western United States--in certain circumstances. In addition to adding clarifying language in subsection (A), the committee amendment incorporates the test that operations off alluvial valley floors but affect water systems that supply such valley floors should "not materially damage" the supply systems. The phrase "not adversely affect" was deleted in order to avoid a possible interpretation that any operation off an alluvial valley floor may have some adverse effect on the water system that supplies an alluvial valley floor.

The language in the final version of the bill is essentially the same.

4. Section 510 (b) (6). Surface owner consent over privately owned coal.

The committee amendment includes a new condition for permit approval designed to assure that coal rights which have been served from the surface estates will not be surface mined unless the parties to the severance, or the surface owner or his assignee, contemplated that the coal would be extracted by surface mining methods.

The language in the final version of the bill is essentially the same. (This provision of the bill is designed to abrogate the rights of companies with coal rights under the broadform deeds now in existence in some of the Appalachian states.)

5. A new subsection 515 (b) (7) was adopted which specifies certain standards concerning soil preservation and reconstruction by horizons. These standards apply only to the highly productive prime agricultural lands which have been and are being used for agricultural production. The standards

are designed to assure full reclamation of the natural productivity of these lands.

The language in the final version of the bill is essentially the same.

6. The committee amendment to subsection 515(c) removed the variance procedure for mountaintop mining operations, reduced the economic, land development and other tests required as justification for such an operation and broadened the applicable post-mining land use to include all types of agriculture. The subsection specifies that a permit is required, and this is the same permit required under sections 507 and 508 and the same hearing and other procedures apply.
7. The committee amendment deletes the discretionary capability of mine operators on steep slopes to place the spoil from the first short or initial block out on the downslope immediately below the bench.

The language in the final version of the bill is essentially the same. The final language further requires that the placement of excess spoil be designed by a registered engineer in conformance with professional standards.

8. Section 520(d). Attorney's fees related to citizen suits.  
The committee amendment authorizes the award of attorney's and expert witness fees to any party to the litigation.

The language in the final version of the bill is essentially the same. The provision also requires that in cases where a temporary restraining order to preliminary injunction is sought, the court may require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure. This requirement could act to discourage the filing of frivolous suits.

9. Section 522(a)(6). The designation of "grandfather".  
Both H.R. 2 and the committee amendment require implementation of a system for designated areas unsuitable for surface coal mining. H.R. 2 "grandfather" existing operations and those for which there were substantial legal and financial commitments prior to September 1, 1974. The applicability of the grandfather to operations where there has been a substantial legal and financial commitment is updated to January 4, 1977, in the committee amendment.

The language in the final version of the bill is essentially the same. As finally passed, H.R. 2 exempts operations for which a substantial legal or financial commitment were made prior to January 4, 1977.

10. Section 522(e). Mining in national forests  
The committee amendment includes an exception to H.R. 2's prohibition of coal strip mining in national forests. Under the committee amendment, surface coal mining operations may be permitted on national forests lands without significant forest cover west of the 100th meridian if the Secretary determines there are not other specified values incompatible with surface mining and the Secretary of Agriculture determines that surface mining is in compliance with certain specified laws. Surface operations and impacts

incident to an underground coal mine are permitted. Surface mining is prohibited within the boundaries of the Custer National Forest.

The language in the final version of the bill is essentially the same.

11. Section 701(2). "Approximate original contour".

The definition of "approximate original contour" is modified in the committee amendment to establish clearly that the concept includes the terrace shaping of the spoil and leaving access roads.

The language in the final version of the bill is essentially the same.

The following is a list of the more significant floor amendments to the Surface Mining Control and Reclamation Act, H.R. 2.

1. ADOPTED: The Secretary of the Interior is required to return 50% of the Federal reclamation fee on mined coal to the State where the coal was mined; whereas the bill originally gave him discretionary authority to do so.
2. ADOPTED: Reclamation funds can be used to prevent acid water damage and Indian reservations are eligible to use reclamation funds in the same manner as States.
3. ADOPTED: The authority of the Secretary of the Interior to designate lands as unsuitable for non-coal mining is limited to lands within the National Forests rather than all public lands.
4. ADOPTED: Informal conferences are permitted, instead of mandatory public hearings, on objections to mining permits.
5. REJECTED: A 5-year moratorium on strip mining on prime agricultural lands was to be imposed and a study conducted of farmland reclamation techniques.
6. ADOPTED: Mining is permitted in alluvial valley only for mines actually in commercial production in the year preceding enactment of the bill.
7. ADOPTED: Public hearings are required within 10 days after an operator receives a cessation notice.

S. 7 (Metcalf et al.)

Regulates surface coal mining operations through a permit program administered by the Secretary of the Interior. Requires applicants to meet minimum environmental protection performance standards. Allows States to establish surface mining control programs at least as stringent as minimum Federal standards.

Establishes an Abandoned Mine Reclamation Fund to reclaim lands formerly used in mining operations. Introduced Jan. 10, 1977; referred to the Committee on Interior and Insular Affairs. On May 20, 1977, the measure was indefinitely postponed in the Senate and H.R. 2 was passed in lieu.

The following is a summary analysis of the Senate version of the Surface Mining Control and Reclamation Act of 1977 (S. 7). Changes made by the Senate Committee on Energy and Natural Resources to the bill, as it was introduced in the Senate, included the following:

1. As introduced, S. 7 contained a very controversial provision labeled

the "Mansfield amendment," which imposed the following requirement on the regulatory authority. In instances where the ownership of the surface of Western lands was privately owned and the coal subjacent to the land was federally owned, the bill would have prohibited the leasing of the federally owned coal, even in instances where the surface owner would have granted his permission. This provision was changed in committee markup to allow the operator to mine Federal coal under private surface if the written permission of the surface owner is first obtained. The amendment also required the Secretary of the Interior to avoid, wherever possible, leasing lands for coal development if the owners of the surface expressed a preference against the leasing of any such lands for surface coal mining. The language in the final version of the bill is essentially the same as that in the reported version. Section 714 of the bill requires the written permission of the surface owner or the deposit of the appraised value of the surface owner's interest in the United States district court by the lessee and the final execution of the settlement of the rights of the two parties.

2. Section 402 of the bill, as introduced, contained the provisions for the initial regulatory procedures. This section outlined the timetables for compliance with the provisions of the legislation. As introduced, the bill contained no exemptions for mine operators regardless of the size of their operations. In an amendment to the bill, the Senate Committee on Energy and Natural Resources included a variance for small and intermediate sized operators which, in effect, stated that these operators, if they were not producing in excess of 200,000 tons of coal annually, would not have to comply with the provisions of the bill until 30 months from the date of enactment. This amendment was altered in floor action in the following manner: Instead of allowing the mine operators 30 months to comply with the requirements of the legislation, it only allows them 24 months and the exemption itself would be extended only to operators producing 100,000 tons or less of coal annually.

3. As introduced, S. 7 contained stringent provisions regarding the restoration of the approximate original contour of the land. In instances in which a company was engaged in mountaintop removal, this section of the bill did allow the mine operator to vary from the standard requirements of the legislation to the extent that the mined area could be graded to a gently rolling topography with inward drainage except at specified points, and the land could be used for either agricultural purposes or for industrial, commercial, residential, or public facility uses. By such action, however, did require the issuance of a variance by the regulatory authority. In the reported bill, the mine operator is not required to obtain a variance in order to claim the mined area with this post-mining land use in mind. Unlike the original bill, the reported version does not require that in order to qualify for such a variance, the permit area must have been included in a land use plan prior to the actual mining. The language merely states that the reclaimed area must be "capable" of supporting post-mining agricultural, industrial, commercial, residential, or public facility uses...."

4. The original language of S. 7 established a reclamation fund for abandoned lands which would have been generated by levying a tax on coal produced on Federal lands. The amount of the tax was originally 3 cents/ton of Federal coal produced by surface mining methods and 15 cents, of Federal coal produced by underground methods. This requirement was changed by the Committee in the following manner: the funds for the establishment of the abandoned mines reclamation fund are to be established by a tax of 35 cents/ton for all coal produced by underground mining methods, or 10% of the value of the coal at the mine as determined by the Secretary, whichever is

less. No reclamation fee is assessed on lignite production. The language in the final version of the bill is the same as that in the report.

5. In an amendment to Section 416 (Surface Effects of Underground Mining), the Committee added a provision which called upon the Secretary of the Interior, when promulgating the rules and regulations directed toward the surface effects of underground mining, to consider the distinct differences between surface coal mining and underground coal mining. Language was also added which stated that any rules and regulations issued pursuant to the Act should not be in conflict with or supersede any provision of the Federal Coal Mine Health and Safety Act of 1969 and the Secretary would be further required to obtain the written concurrence of the head of the department which administers the Mine Safety Act prior to issuing any regulations. The committee amendment was retained in the final version of the legislation.

6. As introduced, S. 7 contained language that mining operations west of the 100th meridian would not be permitted if any such mining would have "substantial adverse effect on alluvial valley floors underlain by unconsolidated stream laid deposits where farming can be practiced in the form of irrigated, flood irrigated, or naturally subirrigated hay meadows or other crop lands (excluding undeveloped range lands), where such valley floors are significant to the practice of farming or ranching operations, including potential farming or ranching operations if such operations are significant and economically feasible." Although this language was retained in the committee report, further language was added that provides an exemption to this provision for mining operations which had produced coal in commercial quantities in the year preceding the enactment of the Act or those mining operations for which a substantial legal or financial commitment had been made prior to Jan. 1, 1977. This language was essentially unchanged by subsequent floor action by the full Senate.

7. The timetables for compliance which were established in the original version of the bill were lengthened by the Committee during markup. As reported, the bill requires, under Section 402, that all State-regulated surface coal mining operations comply with the provisions of the environmental protection performance standards within 6 months after the date of enactment of the Act. As introduced, the bill required compliance upon the date of its enactment. Under Section 403, each State wishing to assume the exclusive jurisdiction over the regulation of surface mining operations is given 18 months to demonstrate, through the submission of a State program, that it has the capability of carrying out the provisions of this Act. Under section 404, the Secretary shall have approved or disapproved a State program within 6 months following the date that the program was submitted to him. If the Secretary disapproves a State program, in whole or in part, the State shall have 60 days to resubmit a revised program to the Secretary. The Secretary shall implement a Federal program for a State no later than 30 months after the date of enactment if the State fails to submit its own program within 18 months after the date of enactment or fails to resubmit an acceptable program within 60 days following the disapproval of its initial program. The Secretary may extend the period for the submission of a State program up to six months. (Sections 403 and 404 remained essentially the same as the introduced version.)

8. As S. 7 was introduced, the approval of the State programs, promulgation of Federal programs, or the implementation of the Federal lands programs pursuant to the provisions of the Act would have constituted a major action within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969. This provision of the Surface Mining Control and

Reclamation Act was changed by the Committee in markup, therefore any such action pursuant to the legislation does not constitute a major action under the aforementioned section of the National Environmental Policy Act of 1969. The language contained in the committee report was retained in the final version of the bill.

9. In the original Senate bill, the following amounts would have been granted to the States for the purpose of assisting such States in developing, administering, and enforcing State programs under the Act: The first year -- 80% of the total costs incurred; the second year -- 60% of the total costs incurred; the third and fourth years -- 40% of the total costs incurred. (No assistance after the fourth year.) This provision was changed by the Committee during markup in the following manner: The percentages of the costs assumed by the Federal Government during the first and second years remains the same. In the third year and each year thereafter, the Federal Government assumes 50% of the cost of the aforementioned actions by the States. The language contained in the Committee report on S. 7 was retained in the final version of the bill.

On Thursday, June 30, the Senate and House conferees completed action on H.R. 2. Among their actions, the conferees:

Adopted House language on Title VI -- Designation of Lands Unsuitable for Noncoal Mining -- after deleting language relative to national forests.

Adopted House language limiting research institutes to coal research.

Adopted a reclamation fee on lignite of 2% of the value of the coal at the mine or 10 cents per ton, whichever is less.

Agreed that inspections during the interim program be performed without advance notice but that the Secretary has discretionary authority to have them made.

Adopted House language to assure that grandfather permit renewals for operations in existence on alluvial valley floors are for the life of the operations.

Agreed to delete language requiring that notice of inspection be given to State and county governments.

Agreed to require inspections at least once every 6 months during the interim program.

Agreed to language requiring States to comply with "rules and regulations issued by the Secretary pursuant to this Act."

Adopted language that requires the regulatory authority to issue a permit for mining on prime farmland after making a finding in writing that the applicant has the technological capability to restore the mined area within a reasonable time to "equivalent or higher levels of yield as non-mined prime farmland soils in the reconstruction standards" in the Act.

Adopted House language on surface owner protection in federal-coal/private-surface situations.

Adopted House language relative to a study of Indian lands, with a proviso that the jurisdictional status of such lands will not change during the

study.

Adopted language relative to private-coal/private-surface situation that if the land conveyance "does not expressly grant the right to extract coal by surface mining methods, the surface/subsurface legal relationships shall be determined in accordance with state law." Also agreed to language stating that the regulatory authority is not expected to adjudicate property rights disputes.

Adopted essentially the Senate definition of prime farmlands.

Adopted House language on special bituminous coal mines.

Adopted essentially the Senate language on alluvial valley floors, including the Wallop amendment on land exchanges. Also adopted a proviso on land exchanges where fee coal is involved.

Adopted the Senate grandfather clause for prime farmlands. Also adopted language making prime farmland provision effective upon enactment.

Adopted language requiring highwalls to be covered, but permitting spoil to be placed on the bench under the same conditions as are provided in the mountaintop provision.

Adopted language in Section 711 — Experimental Practices — to allow private, commercial, industrial, and residential post-mining land uses to be experimented with in highwall areas.

Adopted House language to permit mining within 500 feet of active or abandoned underground mines if approved by the regulatory authority and MESA.

Adopted Senate language permitting the regulatory authority to permit retention of natural barriers as part of the reclamation performance standards.

Adopted Jan. 1, 1977, as effective date of legislation.

Agreed to language requiring daily door-to-door notice of blasting.

Agreed to strike language that would have permitted the Secretary to deduct a penalty from an operator's performance bond.

Adopted Senate language in subsection 521(a)(4) relative to shutdown orders.

Adopted language making the Secretary's actions relative to approval of a State program of promulgation of rules and regulations subject to judicial review in the District Courts.

Adopted language to allow the Secretary to award attorney's fees in cases he decides.

Agreed to delete language making the provision on designation of areas unsuitable for surface coal mining applicable to national forests in Alaska.

Adopted Senate language regarding Secretary's authority to enforce State programs.

Agreed to language to assure that workers' compensation laws are not affected by the Act.

Adopted Senate language to allow a sliding scale for cost-sharing with the states.

Agreed that lands controlled by the Tennessee Valley Authority would be considered federal lands for the purposes of the bill.

H.R. 4018 (Evans of Delaware)

Sections 138 and 139 amend Title VIII of the Surface Mining Act and increase the number of coal research laboratories from 10 to 13, with attendant increases in authorized funds. Introduced Feb. 24, 1977. Reported from the Committee on Ways and Means (H.Rept. 95-429) on June 16, 1977. Measure passed House, amended, on July 18, 1977. Measure passed Senate, amended, on Oct. 6, 1977. House agreed to Senate amendment, with amendment, on October 13, and conferences were scheduled in both Houses.

S. 2672 (Ford et al.)

Increases assistance to small mine operators from \$150 million to \$245 million over the next 15 years. Introduced Mar. 6, 1978; referred to the Committee on Energy and Natural Resources.

HEARINGS

- U.S. Congress. House. Committee on Interior and Insular Affairs. Subcommittee on Mines and Mining. Regulation of strip mining. Hearings, 92d Congress, 1st session, on H.R. 60 and related bills. Washington, U.S. Govt. Print. Off., 1972. 890 p.  
Hearings held Sept. 20...Nov. 30, 1971.
- U.S. Congress. Senate. Committee on Interior and Insular Affairs. Regulation of surface mining operations. Hearings, 93d Congress, 1st session, on S. 425 [and] S. 923. Mar. 13-16, 1973. Parts 1 and 2. Washington, U.S. Govt. Print. Off., 1973. 1410 p.
- U.S. Congress. Senate. Committee on Interior and Insular Affairs. Subcommittee on Minerals, Materials and Fuels. Coal surface mining and reclamation. Hearing, 93d Congress, 1st session. Apr. 30, 1973. Washington, U.S. Govt. Print. Off., 1973. 85 p.
- Surface mining. Hearings, 92d Congress, 1st session, on S. 77, S. 630, S. 993, S. 1160, S. 1240, S. 1498, S. 2455, and S. 2777; pending surface mining legislation. Parts 1 and 2. Washington, U.S. Govt. Print. Off., 1972. 882 p.
- Surface mining. Hearings, pursuant to S. Res. 45; a national fuels and energy policy study, 92d Congress, 1st session on S. 2777 and S. 3000. Feb. 24, 1972. Part 3. Washington, U.S. Govt. Print. Off., 1972. p. 883-1173.  
"Serial no. 92-13"

REPORTS AND CONGRESSIONAL DOCUMENTS

U.S. Congress. Senate. Committee on Interior and Insular Affairs. Coal surface mining and reclamation. Washington, U.S. Govt. Print. Off., March 1973. 143 p.  
At head of title: 93d Congress, 1st session. Committee print.  
"Serial no. 93-8(92-43) "

----- Factors affecting the use of coal in present and future energy markets. Washington, U.S. Govt. Print. Off., 1973. 43 p.  
At head of title: 93d Congress, 1st session. Committee print.  
"Serial no. 93-9(92-44) "

----- The issues related to surface mining. Washington, U.S. Govt. Print. Off., December 1971. 255 p.  
At head of title: 92d Congress, 1st session. Committee print.  
"Serial no. 92-10"

----- Legislative proposals concerning surface mining of coal. Washington, U.S. Govt. Print. Off., Sept. 1, 1971. 25 p.  
At head of title: 92d Congress, 1st session. Committee print.

----- Surface Mining Reclamation of 1972; report to accompany S. 425. Washington, U.S. Govt. Print. Off., 1973. 94 p.  
(93d Congress, 1st session. Senate. Report no. 93-402)

U.S. Council on Environmental Quality. Coal surface mining and reclamation: an environmental and economic assessment of alternatives. Prepared at the request of Henry M. Jackson, chairman, Committee on Interior and Insular Affairs, United States Senate, pursuant to S. Res. 45; a national fuels and energy policy study. Washington, U.S. Govt. Print. Off., 1973. 143 p.  
At head of title: 93d Congress, 1st session. Committee print.  
"Serial no. 93-8 (92-43) "

OTHER CONGRESSIONAL ACTION

N/A

CHRONOLOGY OF EVENTS

- 03/06/78 -- S. 2672 was introduced, which would increase assistance to small mine operators from \$150 million to \$245 million over the next 15 years.
- 03/00/78 -- Deadlines for compliance with the provisions of the Act will become effective in May 1978. The

Office of Surface mining has been unable to establish its inspection and regulatory programs due to lack of funding caused by a delay in enacting a supplemental appropriations bill which also contained the funding for the B-1 bomber.

- 12/13/77 — The Office of Surface Mining Reclamation and Enforcement (OSM) issued its final interim regulations pursuant to the Surface Mining Law, P.L. 95-87. Since then, the National Coal Association, along with coal mine operators have filed approximately 11 suits against the OSM alleging that the regulations go beyond the intent of the Law and have generated undue hardships, especially for small mine operators.
- 08/03/77 — H.R. 2 signed into law (P.L. 95-87).
- 07/21/77 -- House conference report on H.R. 2 (H.Rept. 95-493) was approved by a vote of 325-68.
- 07/20/77 -- Senate conference report on H.R. 2 (S.Rept. 95-337) was approved by a vote of 85-8.
- 06/30/77 -- Senate and House conferees completed action on H.R. 2 (see legislation section for details of changes made in the bill).
- 05/20/77 -- The Senate passed S. 7 (57-8). The Senate also passed H.R. 2, after striking all provisions after the enacting clause and inserting the language of S. 7.
- 05/10/77 -- S. 7 reported to the Senate from the Committee on Energy and Natural resources (S.Rept. 95-128).
- 05/05/77 — H.R. 2 discharged in the Senate by the Committee on Energy and Natural Resources. The measure was held at the desk.
- 05/02/77 -- Surface mining bill S. 7 reported by Committee on Energy and Natural Resources.
- 04/29/77 — Surface mining bill H.R. 2 was approved by the House (241-64).
- 04/26/77 -- H.R. 2 was reported by the House Rules Committee with an open rule allowing one hour of general debate.
- 04/20/77 -- Markup of S. 7 by the Committee on Energy and Natural Resources, with further markup tentatively scheduled for Monday, May 2, 1977.
- 04/19/77 -- H.R. 2 was reported from full House Interior Committee, including the following changes:
  1. The definition of "approximate original contour" is modified in the Committee amendment to establish clearly that the concept includes the terrace shaping of the spoil and leaving access roads.

2. Variances have been included in the bill to allow mining in National forests under certain conditions.
3. A new subsection was added to the environmental protection performance standards, which requires the reconstruction of or suitable substitutes for the various horizons of soil in prime and unique agricultural lands.
4. The regulatory authority will be allowed to use its discretion when determining whether citizen complaints are worthy of holding a public hearing.
5. Regarding alluvial valley floors, the Committee added language that would prohibit mining in alluvial valley floor areas of agricultural significance. Furthermore, the Committee included language authorizing the regulatory authority to restrict mining outside alluvial valley floors but that could adversely affect the water supply to any such valley floor. The Committee amendment also contains an expanded "grandfather clause" exempting certain operations in alluvial valley floors if the operations were already in effect and producing coal during the year preceding the enactment of the Act or if large financial commitments had already been made for the establishment of such a mining operation.
6. Modifications have been made to Section 711 to allow the Secretary of the Interior to permit experimental practices in land reclamation providing that the Secretary examines and approves each proposed plan individually.

03/24/77 — House Interior Committee printed a revised version of H.R. 2 — a committee print.

03/01/77 - 03/03/77 — Hearings held on S.7.

02/22/77 - 02/25/77 — Hearings held on H.R. 2.

02/08/77 — The House held its first day of hearings on its bill, H.R. 2. Secretary Andrus was also present at these proceedings and offered testimony very similar to that offered to the Senate on the previous day. Also present at the hearings was the Honorable Milton Shapp, Governor of Pa. The Governor emphasized the fact that Pa. presently has a law almost identical to the Federal proposal and that the implementation of their law has not caused any coal production losses. Information, along with a slide presentation, was also provided by Mr. William Guckert, a state official in charge of coal mine reclamation. Mr. Guckert suggested that it is entirely possible for operators to restore economically the approximate original contour and eliminate any highwall remnants.

02/07/77 — The Senate held its first day of hearings on the bill, S. 7. The primary witness at the proceedings was the Honorable Cecil Andrus, the newly appointed Secretary of the Interior. The Secretary emphasized that the new Administration wants to cooperate in every way possible with the Congress in establishing a strong, comprehensive,

and workable surface mining bill. The Secretary suggested some changes in the legislation including the elimination of the "Mansfield amendment" and changes in the language of the provisions dealing with the alluvial valley floors in the Western coal mining states.

- 01/10/77 -- 01/12/77 -- The House Interior Committee held briefings on the question of Federal regulation of surface mining. Leaders of the coal mining industry attended. Participants included Mr. Ian MacGregor, an official of the National Coal Association and Chairman of the Board of AMAX Corporation and Mr. Edwin Phelps, President of Peabody Coal Company, the Nation's largest producer. Also present were representatives of various environmental groups and organizations representing residents of coal mining districts affected by mining.
- 09/15/76 -- H.R. 13950 was denied a rule by the House Rules Committee by a vote of 9-6.
- 08/31/76 -- H.R. 13950 was reported by the House Interior Committee.
- 03/23/76 -- Further consideration of H.R. 9725 was tabled by the House Rules Committee.
- 02/24/76 -- The House Committee on Interior and Insular Affairs reported H.R. 9725, the Surface Mining Control and Reclamation Act, to the full House.
- 12/04/75 -- The House Committee on Interior and Insular Affairs voted 24-14 to put H.R. 9725, the new Surface Mining Control and Reclamation Act on its Calendar. Action on the bill, however, will not take place until the next session of Congress, probably in January 1976.
- 06/10/75 -- Motion to override veto failed of passage in the House, 278-143.
- 05/20/75 -- President Ford vetoed H.R. 25, the Surface Mining Control and Reclamation Act of 1975.
- 04/16/75 -- Joint Conference considered the surface mining bills, H.R. 25 and S. 7.
- 04/09/75 -- A caravan of truckers, representing coal mining interests, drove to Washington, D.C. from many of the Eastern coal mine areas to protest the strip mining bills S. 7 and H.R. 25. Upwards of 60 coal trucks circled the White House and Capital with air horns blowing and carrying protest signs and banners.
- 12/31/74 -- Surface Mining Bill, S. 425, was pocket vetoed.
- 12/16/74 -- Senate agreed to S. 425 Joint Conference Report No. 93-1522.
- 12/13/74 -- House agreed to S. 425 Conference Report No. 93-1522.

- 12/09/74 -- In the House, the Joint Conference Report failed under suspension of the rules.
- 08/07/74 -- Conference Committee began meeting on H.R. 11500 and S. 425.
- 07/25/74 -- The House passed H.R. 11500 by a vote of 298 to 81, culminating six days of floor debate that began on July 17. In the process, the house voted down H.R. 12989 by 156 to 255, and H.R. 15000 by 69-336.
- 05/14/74 -- Full Committee on Interior and Insular Affairs completed 19 days of public markup on H.R. 11500, which began on Feb. 20, 1974; the Committee reported it favorably, 26 to 15.
- 11/12/73 -- Joint Interior Subcommittees on Mines and Mining and on the Environment reported a clean bill (H.R. 11500) to the full Committee having held 29 days of public markup after Aug. 2, 1973 on a new bill (Draft No. 3)
- 10/09/73 -- The Senate passed S. 425 by a vote of 82 to 8.
- 09/10/73 -- The Senate Committee on Interior and Insular Affairs completed 10 days of public markup on S. 425.
- 09/00/73 -- The Senate Interior Committee unanimously reported S. 630, but the 92d Congress adjourned before the Senate took any action on it.
- 06/08/73 -- The Senate Committee held three days of hearings on coal policy issues, which included the potential impact of Federal Surface mining legislation on coal development.
- 05/15/73 -- Joint Subcommittee completed six days of hearings, which had begun on Apr. 9, 1973.
- 05/00/73 -- Joint Interior Subcommittees inspected Western coal surface mining sites. This continued the April 1973 inspection of coal surface mines and reclaimed areas in the Eastern States.
- 04/30/73 -- The Senate Interior Committee held hearing on report of Council on Environmental Quality, entitled "Coal Surface Mining and Reclamation--An Environmental and Economic Assessment of Alternatives."
- 03/16/73 -- The Senate Interior Committee held four days of hearings on S. 425, S. 923, S. 1163, S. 1185, S. 1612, and S. 946, beginning on Mar. 13.
- 10/00/72 -- The House passed H.R. 6482 by 265 to 75, but the 92d Congress adjourned before the Senate took any action on its bill.

ADDITIONAL REFERENCE SOURCES

U.S. Department of the Interior. Surface mining and our environment. Washington, 1967. 124 p.

U.S. Library of Congress. Congressional Research Service. Mined land reclamation requirements: Issues, actions and arguments [by] George Siehl. [Washington] Apr. 18, 1968 (rev. Apr. 24, 1972). 52 p.

Multilith 72-101EP [Available from CRS Environment and Natural Resources Policy Division]

——— Strip mining, selected references [by] George Siehl. [Washington] Jan. 1974. 21 p.

Multilith 74-16EP [Available from CRS Environment and Natural Resources Policy Division]

LEGISLATIVE SUMMARY

SB 843 "An Act relating to surface coal mining and the surface effects of underground coal mining; and providing for an effective date."

The bill proposes to add a new chapter to AS 41.

Sec. 41.45.010 Basic finding that the state is best able to regulate surface coal mining and reclamation under the U S. Surface Mining Control and Reclamation Act of 1977. The purposes of the bill include: assuring the responsible extraction of coal, the reclamation of coal mining areas, protecting the rights of surface owners, minimizing degradation of land and water and assuring appropriate public participation in the regulatory process.

- .020 Vest jurisdiction over surface coal mining and reclamation operations in the Commissioner of the Department of Natural Resources.
- .030 Enumerates general duties, including adoption of regulations, issuing permits, holding hearings, issuing orders, inspections, prepare reports, receive grants, participate in the abandoned mine land program, coordination and cooperative agreement with other agencies.
- .040 Regulations adopted or permits issued may vary for a particular condition, type of coal, or area of the state.
- .050 Employees administering or a private contractor may not have a direct or indirect financial interest in an underground or surface coal mining operation. Prescribes a designation of a class A misdemeanor if a person knowingly violates this section. (NOTE: \$5,000 fine and a jail sentence of one year).
- .060 Requires coal mine operators to apply for a permit to conduct surface coal mining and reclamation operations beginning 8 months after approval of the state's program.

If the Alaska program is disapproved and the federal program has not been promulgated, existing operations which comply with the federal statute may continue. Permits which lapse during this period will continue in full force until promulgation of a federal program.

- .070 Permits will be issued for five years. The Commissioner can issue a permit for a longer period if the applicant shows that it is necessary in order to obtain financing for equipment or to open the operation.

A permittee is required to commence operations within 3 years after the permit is issued. This can be extended if the permittee show litigation is precluding commencement of operation or threatens substantial economic loss or for

reasons beyond the control, fault, negligence of the permittee. If the coal is to be mined for use in a synthetic fuel facility or specific major electric generating facility, surface mining is considered to have begun at the time construction of the facility is begun.

- .080 Provides that permits carry a right of successive renewal with respect to areas within the boundaries of the original permit, subject to a burden of proof on the opponents of renewal to demonstrate that the operation is not in compliance with regulatory requirements.

Renewals involving new land areas require the same procedures and standards as apply to new permit applications.

Application for permit renewal must be received by the Commissioner at least 120 days before expiration of the permit.

If the application is received at least 120 days before expiration and the permittee has complied with the bonding requirement the operation may continue under the permit after the expiration date until a final administrative decision on the renewal is made.

- .090 Allows the Commissioner to set a fee schedule for a new permit, permit renewal, or transfer permit applications; requires that the fees not exceed the actual or anticipated costs of reviewing the application.
- .100 Requires the public filing of permit applications and copies of all materials filed under this chapter; with the exception of designated confidential information.
- .110 Requires the Commissioner to adopt regulations relating to the contents of permit applications consistent with the requirements of the federal program. These must take into account the unique mining and environmental conditions of Alaska.
- .120 Establishes small operator assistance for certain laboratory work at no cost. This is for operations which will produce under 100,000 tons of coal annually.
- .130 Provides for public notice of pending applications for surface coal mining and reclamation permits.
- .140 Allows a person who may be adversely affected by the proposed operation, as well as federal, state or municipal agencies, to file written comments and objections to the application within 30 days. Such persons must request an informal conference to discuss their comments or objections with the Department.

The Commissioner is required to issue a decision regarding the permit application within 60 days of the informal conference, or as provided in Section .180 below.

- .150 Provides for formal hearings regarding the Commissioner's decision on the permit application upon request of the applicant or any person who may be adversely affected within 30 days after the request. The Commissioner may grant temporary relief pending his final decision when circumstances warrant.
- .160 Requires that before a permit can be issued, the applicant must furnish a performance bond conditioned on faithful performance of the requirements of this statute and the permit. The bond must be sufficient to assure completion of the applicant's reclamation plan by the Department in the event of a forfeiture. In lieu of a bond, the Commissioner may accept cash or negotiable bonds or certificates of deposit or the Department may accept a self-bond under future regulations to assure financial solvency. The amount of the bond may be adjusted for good cause, including changes affecting land areas and costs of reclamation.
- .170 Contains provisions governing release of performance bonds. The applicant must give notice of its request for release of bond, and the Department must conduct an inspection and evaluation of the reclamation work involved. Provides for staged release of the bond, depending on the degree of reclamation work completed and the Commissioner's evaluation. Persons whose legal interests may be adversely affected, and governmental agencies, may file objections to the release of bond and request a hearing, as may an applicant whose request for bond release has been denied.
- .180 Requires the Commissioner to make a decision on a permit application within 120 days after receipt, which may be extended by an additional 60 days upon receipt of additional information required for a decision. This section sets out the basic criteria for approval of an application. A permit may not be issued if the applicant is currently in violation of environmental standards regarding surface coal mining operation which it operates in the United States or if the applicant has had a demonstrated pattern of willful violations of this chapter.
- .190 Deals with revisions and transfers of permits. The Commissioner is required to establish guidelines for determining the extent of revision for all permit application requirements and procedures, including notice of hearing.  
  
A permit can not be transferred, assigned or sold without written approval of the Commissioner. A successor may continue the operation until the transfer application is granted or denied and meets the requirements of this section.
- .200 Requires exploration activity to be conducted only according to regulations adopted by the Commissioner. The regulations must include provisions for reclamation of excavations, roads, drill holes, and the removal of facilities and equipment.

Under a coal exploration permit no more than 250 tons can be removed without specific written approval of the Commissioner.

- .210 Within 120 days after the effective date of this chapter, the Commissioner is required to propose regulations consistent with the environmental performance standards of the Federal law. The regulations promulgated under this chapter for both surface coal mining and reclamation operations and surface effects of underground mining must include appropriate adjustments to meet the conditions in Alaska.
- .220 Requires the surface effects of underground mining be regulated in a similar fashion to surface coal mining operations. The Commissioner can suspend underground coal mining activities in populated areas if there is an imminent danger to the inhabitants.
- .230 Provides the basic authority for the Department to inspect and monitor operations. The Commissioner may require a permittee to: make monthly reports, install, use and maintain necessary monitoring equipment or methods and other information relating to the operation as the Commissioner considers reasonable and necessary. The Commissioner can inspect the operation. The inspections are to occur on an irregular basis. Inspections are to occur without prior notice, the inspector must notify the permittee's representative, on the site, upon his arrival and invite the representative to accompany him during the inspection. The inspector is required to file a report about the inspection.
- .240 Sets forth the Department's basic enforcement authority. A violation of this chapter or permit which causes imminent danger to public health or safety or which threatens significant, imminent environmental harm, requires the inspector to issue a cessation order for the whole operation or that portion causing harm. The order remains in effect until further Departmental action. If a violation cited does not cause imminent danger, a notice of violation is issued.

Cessation orders and notices of violation are subject to appeals and full due process hearings by persons who may be adversely affected. The Commissioner is authorized to request the Attorney General to institute a civil action for relief. There are provisions governing judicial review of these actions.

- .250 Provides for both civil and criminal penalties for violations of this chapter and permits. Civil penalties are mandatory for cessation orders (may not exceed \$5,000), but discretionary for notices of violation. Willful and knowing violations are class C felonies (NOTE: \$50,000 fine and 5 years jail). Failure to correct a violation during the period of time permitted by the notice or subsequent extension requires a \$750 per day penalty.

- .260 Requires the Commissioner to use competent and scientifically sound data in determining lands unsuitable for all or certain types of surface coal operations. It allows a person with a legal interest which may be adversely affected to petition the Commissioner to have areas designated unsuitable for all or certain types of coal mining. Areas must be designated unsuitable if the Commissioner determines that reclamation in the area in question is not technologically feasible. There are four discretionary criteria for designating land unsuitable. Mining is prohibited in protected areas (subject to existing rights); National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, National Recreation Areas, publicly owned parks, historic sites, 100 feet of public roads, 300 feet of occupied dwelling, public building, school, church, community or institutional building, public park or 100 feet of a cemetery.
- .270 Provision regarding abandoned mine lands in order to ensure state participation in the federal Abandoned Mine Reclamation Fund. The Fund is for the reclamation of land adversely affected by past coal mining practices. Contains the administrative authority to establish priorities, designate eligible lands, submit reclamation plans and annual projects to the Department of Interior and administer funds received.
- .280 Defines eligible lands as those which were mined or affected by coal mining, left in an inadequate reclamation status, and for which there is no continuing reclamation responsibility under law.
- .290 Gives the Department power to enter onto property for reclamation purposes. Does not create new rights of action or eliminate existing immunities.
- .300 Authorizes the Commissioner to acquire abandoned mine areas for reclamation purposes and to dispose of such property when: it is necessary for successful reclamation, in the public interest, serve recreational, historic, conservation, open space, and to meet emergency situations. The Commissioner shall pay the fair market value of the property. The Commissioner can sell the property if it is suitable for industrial, commercial, residential or recreational development. The sale has to be consistent with any state and local land use plans.
- .310 Requires the Commissioner to place a lien upon state funded reclaimed property for the increase in fair market value. Exempted are properties owned before May 2, 1977, the owner did not consent to, participate in, or exercise control over the surface operation which necessitated the project. A person affected by this section may petition for a hearing within 60 days after the lien is recorded.
- .320 Authorized the filling of voids and sealing tunnels with money from the Abandoned Mine Land Fund.
- .330 Authorized emergency entry without prior notice onto land to

abate an emergency which constitutes a danger to the public health and safety

- .340 The Commissioner may request the Attorney General to initiate action for an injunction to restrain any interference with the exercise of the right to enter or work described in .270 - .340. Authorizes the State to construct and operate plants for control and treatment of water pollution from mine drainage in compliance with the Federal Water Pollution Control Act.
- .900 Specifies that the requirements of this chapter apply to government agencies, including publicly-owned utilities.
- .910 Exempts from this chapter extraction of coal for non-commercial use of the land owner or lessee, commercial coal operations which affect 2 acres or less and coal extraction as part of government-financed construction.
- .920 Authorizes departures from the environmental performance standards for experimental practices of limited size and which do not down grade the environmental, public health or safety standards of the program. This provision needs approval of the U. S. Department of Interior.
- .930 Provides that this chapter does not affect a person's water rights and that any impairment of water supply must be remedied by the operator.
- .940 Provides authority for the Commissioner to require training, examination and certification of blasters.
- .950 Creates a civil cause of action on behalf of persons who may be adversely affected by a failure to comply with the chapter against both the state agencies and alleged violators. A person commencing action under this section must give 60 days notice and the action can only be filed in the judicial district in which the operation is located.
- .960 Provides that any provision of this chapter which the Secretary of Interior determines to be inconsistent with the federal Act is invalid. Also, requires the Commissioner to review all changes made in the federal Act or regulations, and to make appropriate recommendations as to whether or not the State program should be changed.
- .970 Provides that this chapter is not to be interpreted to modify any existing state agency's powers over coal leases and exploration permits, except as specifically provided by this chapter and implementing regulations. This section also requires that the provisions of this chapter are applicable to lands conveyed out of federal ownership.

.975 Is the severability clause.

.980 Makes the Administrative Procedure Act applicable to this chapter unless otherwise provided.

.985 Cites the short title of the chapter as the "Alaska Surface Coal Mining Control and Reclamation Act."

.990 Is the definitions section.

Section 2. Requires applications to be submitted under this chapter within 2 months after the date the state program is approved by the Secretary of Interior, and requires the Commissioner to process such an application within 8 months after the Secretary's approval.

Section 3. Reserves the right of the state to contest the constitutional or statutory validity of any of the regulations issued under the federal act.

Section 4. Requires the Commissioner to adopt regulations under the Administrative Procedure Act. The regulations do not take effect until the effective date of Section 1.

Section 5. Provides that Sections 1 and 2 become effective upon approval of the state program by the Secretary of Interior.

Section 6. Provides that Sections 3 and 4 become effective immediately.

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. \_\_\_\_\_  
Title Alaska Surface Coal Mining Control and Reclamation Act  
Requested by \_\_\_\_\_ Date \_\_\_\_\_

II. FISCAL DETAIL

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

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		157.1	157.1	200.2	200.2	200.2
200 TRAVEL		19.8	20.9	42.1	49.5	54.5
300 CONTRACTUAL		375.0	490.3	493.2	428.7	467.2
400 COMMODITIES		1.0	1.1	1.5	1.5	1.8
500 EQUIPMENT		13.0	10.0	2.9	3.0	3.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		565.9	679.4	642.3	684.4	728.2

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		161.9	200.0	190.7	202.6	212.0
FEDERAL FUNDS		402.0	477.5	452.6	478.8	513.2
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME		d	d	e	f	g
PART TIME						
TEMPORARY						

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

See Attachment

IV. DATE 2/8/82 PREPARED BY *Jeff Hannon*  
AGENCY Natural Resources  
Original: Legislative Finance PHONE 465-2400-  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)  
33-001 (Rev. 12/81)

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M  
JUNEAU, ALASKA 99811  
PHONE:

March 26, 1982

To: Senate Resources Ct.

From: Mark Wittow <sup>MW</sup> and Howard Roitman <sup>HR</sup>

Re: Amendment to SB 843 concerning the escrow of civil penalty provision required by the federal Office of Surface Mining.

The following language would likely meet the concern expressed by the Office of Surface Mining regarding the omission of prepayment of a proposed civil penalty into escrow, as required by Section 518(c) of the SMCRA. The suggested language is patterned after a similar provision in the approved Wyoming state program.

Page 32, line 25. Add to the end of paragraph (b):

"If the person wishes to contest either the amount of the penalty or the fact of the violation, the person must submit a bond equal to the proposed penalty amount at the time he files his application for review. The bond shall be conditioned for the satisfaction of the penalty in full if the commissioner's determination as to the occurrence of the violation and the assessment of a penalty are affirmed. The application for review is effective when the bond is approved by the commissioner. If the bond is not approved, the person charged with the penalty has ten days to forward the proposed amount to the commissioner for placement in an escrow account in order to make the petition effective."

# Howard Roitman

Attorney  
Surface Mining Consultant

March 19, 1982

## MEMORANDUM

TO: Mark Wittow

SUBJECT: Amendments to Senate Bill 843

I recommend that the following amendments be made to Senate Bill 843:

1. Page 34, line 6. End the sentence after the word "continues." A new sentence introductory phrase should be inserted immediately after: "Such period continues until"

The Attorney General's office attempted to clarify some awkward phrasing in the House Bill, but in the process reversed the meaning of this section. The mandatory daily penalty kicks in only after the abatement period, as extended by the actions described in (h)(1) and (2) expires. As presently written, the \$750/day penalty applies during the period described in (h)(1) and (2).

2. Page 30, line 10. Insert the following between the words "violator" and "within": "The Commissioner shall hold the conference at a location which allows the permit area to be viewed during the conference. The Commissioner shall issue a written order affirming, modifying, vacating, or terminating the cessation order..."

This is part of the language which got juxtaposed in the House Bill, and disappeared in the Senate Bill. I suppose the first sentence could be covered by regulations. The present sentence doesn't make sense in requiring waiver of the conference within five days of the conference and should be changed.

3. More in the area of typos:  
Page 2, line 17. The word should be "within" rather than "with."  
Page 30, line 12. Add the word "or" between "administrative" and "judicial."

4. With regard to the OSM letter, we could make the following changes:

Comment 7. We could change the reference as they suggest, but I think the present reference should be sufficient since both refer to judicial review provisions.

Comment 10. I suggest changing the word "irreparable" to "reparable" on page 49, line 5. This would be the simplest way to meet this concern.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M  
JUNEAU, ALASKA 99811  
PHONE:

March 25, 1982

The Honorable Bettye Fahrenkamp  
Alaska State Senate  
Pouch "V"  
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Re: Amendments to SB 843

Thank you for the timely and careful consideration of SB 843 by the Senate Resources Committee. I would appreciate the Committee's consideration of several amendments that either make technical corrections to the bill or that help reduce unnecessary conflicts among state agencies concerning the legislation.

We have discussed these proposed amendments with Phil Holdsworth, who has expressed no objection. Due to time constraints, we have not reviewed the amendments with coal operators or public interest groups. Under the same time constraints, we have reviewed these amendments with interested state agencies and have obtained their preliminary approval of the bill if amendment number 3 is adopted. The amendments, with our explanation, are set out below.

1. Page 34, line 6. End the sentence after the word "continues." A new introductory phrase should be inserted immediately after "continues:" "Such period continues until"

The Department of Law attempted to clarify some awkward phrasing in the House Bill, but in the process reversed the meaning of this section. The mandatory daily penalty kicks in only after the abatement period, as extended by the actions described in (h) (1) and (2) expires. As presently written, the \$750/day penalty applies during the period described in (h) (1) and (2).

2. Page 30, line 10. Insert the following between the words "violator" and "within": "The Commissioner shall hold the conference at a location which allows the

permit area to be viewed during the conference. The Commissioner shall issue a written order affirming, modifying, vacating, or terminating the cessation order..."

This part of the language was juxtaposed in the House Bill, and was inadvertently left out of the Senate Bill. Although the first sentence could be covered by regulations, the present sentence, requiring waiver of the conference within five days of the conference, does not make any sense and should be changed.

3. Page 46, line 27. Delete the phrase "with regard to the issuance and administration of coal leases and exploration permits," and replace with "to enforce laws and regulations within its jurisdiction."

Page 47, line 2. After "under it," add a new sentence to read: "The commissioner shall coordinate permitting efforts to prevent unnecessary duplication in permit review."

This amendment would clarify the role and responsibilities of other state agencies for coal operations, and satisfy several of the concerns expressed in testimony to the Senate Resources Committee. The suggested language merely clarifies what is already true in fact.

4. Page 26, line 19. Change "he" to "the commissioner."

This would clarify the meaning of the sentence, as "he" could be mistakenly interpreted to refer to the operator.

5. Page 49, line 5. Change the work "irreparable" to "reparable."

This change would satisfy concerns expressed by the federal Office of Surface Mining. Alternatively, the word "irreparable" could simply be removed. As currently written, the definition is incorrect.

6. Add two new sections at the end of the bill to read:

The Honorable Bettye Fahrenkamp  
March 25, 1982  
Page 3

"\* Section 7. AS 41.45.970, as enacted in Section 1 of this Act, is amended by adding a new subsection to read:

(c) The requirements of AS 44.62.632 - 638 do not apply to actions governed by this chapter.

\* Section 8. Section 7 of this Act takes effect on the effective date of a version of SB 84, "An Act relating to processing of permits by state agencies."

Federal requirements prevent us from being able to include the surface mining program in the permit reform legislation.

7. Page 2, line 17. Change "with" to "within".  
Page 30, line 12. Insert "or" between "administrative" and "judicial."

These are typographical errors.

One other possible change is worthy of discussion. The March 19, 1982 letter from the Department of the Interior's Office of Surface Mining raises one serious concern in regard to the State's proposed surface mining law:

"With one major exception, we believe the bill meets the standards for State program legislation required in the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1201 et seq.

Section 41.45.250(b) does not require the prepayment of a proposed civil penalty into escrow as required by Section 518(c) of SMCRA. This provision is an essential part of all State programs which must be included in the State law. We urge you to include this statutory provision."

Coal operators in all other parts of the United States are subject to this requirement. We originally did not include the provision because we felt it was onerous and a denial of due process. However, it is clear that the provision requested by OSM must be included if the State is to have its surface mining program approved. We therefore recommend its inclusion in your Resources Committee Substitute for SB 843. On the other hand, we would also recommend that litigation funds be included in the fiscal note to enable the State to mount a timely legal challenge to the federal