

2791

SRES

EKLUTNA

LAND

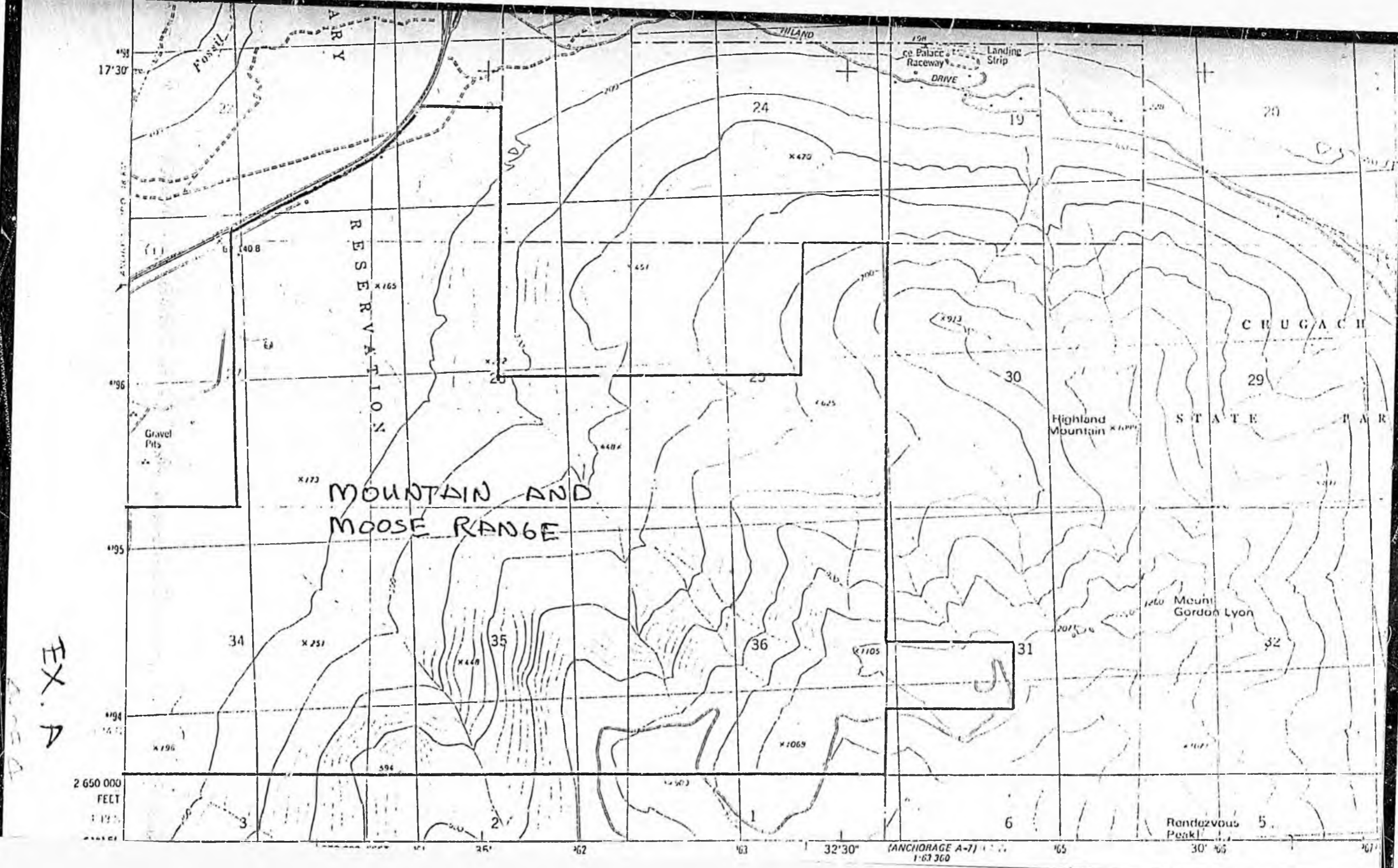
EXCHANGE

-

MINING

LEASE

REGS.



MOUNTAIN AND MOOSE RANGE

RESERVATION

CHUGACH

STATE PARK

Mount Gordon Lyon

Rendezvous Peak

(ANCHORAGE A-7) 1:63 360

EX. A

2 650 000 FEET

17'30"

196

195

194

193

192

191

34

35

36

31

32

24

19

20

29

30

1408

x165

x173

x451

x470

x913

x1069

x1105

Gravel Pits

Highland Mountain

Palace Raceway

Landing Strip

DRIVE

Fossil

HIGHLAND

ARMY

3

2

1

6

5

126° 35'

126° 40'

126° 45'

126° 50'

126° 55'

127° 00'

127° 05'

127° 10'

126° 30'

126° 35'

126° 40'

126° 45'

126° 50'

126° 55'

127° 00'

127° 05'

127° 10'

127° 15'

127° 20'

127° 25'

127° 30'

127° 35'

127° 40'

127° 45'

127° 50'

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128° 10'

128° 15'

128° 20'

128° 25'

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128° 35'

128° 40'

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129° 35'

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130° 55'

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147° 15'

147° 20'

147° 25'

147° 30'

147° 35'

147° 40'

147° 45'

147° 50'

147° 55'

148° 00'

148° 05'

148° 10'

148° 15'

148° 20'

148° 25'

148° 30'

148° 35'

Military Lands to be Conveyed to the State

Eagle River Flats

All lands with the area known as Eagle River Flats, as depicted on the attached map and approximately described as follows:

Commencing at a point in the S2 of Section 2, Township 14 North, Range 3 West, Seward Meridian, which is formed by the intersection of the line of Mean High Water (MHW) and the north-south 1/4 line of Section 2, Township 14 North, Range 3 West, Seward Meridian; Thence meandering in a counterclockwise direction along the base of the bluff, around Eagle River Flats to an unnamed road sometimes called Route Bravo; Thence northerly along the east side of the unnamed road, leaving said roadway at the point of curvature of the road to the west, in a northerly direction to the intersection of a line 200 feet from and paralleling the left bank of Eagle River which is established elsewhere in this agreement; Thence northwesterly to the unnamed road; Thence northwesterly along the west side of said road and a bridge to the S 1/16th corner common to Sections 7 and 8 of Township 14 North, Range 2 West, Seward Meridian; Thence northwesterly, northerly, westerly, and northwesterly along the base of the bluff to the point of intersection of the line of Mean High Water (MHW) of Knik Arm, said point being located within the NW4NW4 of Section 6, Township 14 North, Range 2 West, Seward Meridian; Thence south and southwesterly along the

line of Mean High Water (MHW), crossing the mouth of Eagle River, and continuing to meander along the line of Mean High Water (MHW) returning to the point of beginning. Subject to the right of the State, the Municipality and Eklutna to use and allow others to use the road.

Eagle River Corridor

All lands lying within a corridor bound by meander lines located 200 feet inland and upland of the lines of Ordinary High Water (OHW) of both the left and right banks of Eagle River, including the lands located between the ordinary high water marks on each bank. Said corridor being located within:

Township 14 North, Range 2 West, Seward Meridian

Section 9: S2
Section 10: S2N2, N2S2
Section 11: W2
Section 16: NW4
Section 17: N2

NOTE: In all legal descriptions in these Exhibits the use of the number 2 or 4 in an aliquot part description refers to the fractions 1/2 and 1/4, respectively.

Mountain and Moose Range

Township 14 North, Range 1 West, Seward Meridian

Section 31: N2SW4

Township 14 North, Range 2 West, Seward Meridian

Section 22: Portion lying east and south of the New Glenn Highway right of way

Section 23: Portion of the SW4 lying east and south of the New Glenn Highway right of way

Section 25: S2, E2NE4

Section 26: S2, NW4

Section 27: E2

Section 33: Portion lying east and south of the New Glenn Highway right of way

Section 34: All

Section 35: All

Section 36: All

Goose Bay Military Withdrawal (not depicted on Exhibit A maps)
All lands withdrawn by Public Land Orders 2993, 1345, 1102, or 1523 within Sections 6, 7, 8, 16 and/or 17 of Township 15 North, Range 3 West, Seward Meridian.

MANAGEMENT AGREEMENT AND
RECONVEYANCE LANDS: EKLUTNA TO STATE

All Unconveyed (03/15/82) Eklutna
Selections within:

<u>Sequence of Reconveyance</u>	<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Approximate Acres</u>
1	19	14N	3E	625.04
2	28	14N	3E	640
3	21	14N	3E	640
4	18	14N	3E	623.28
5	16	14N	3E	640
6	17	14N	3E	640
7a	8	14N	3E	540
7b	7	14N	3E	621.52
8	12	14N	2E	640
9	5	14N	3E	640
10	6	14N	3E	539.76
11	1	14N	2E	480
12	26	15N	2E	145
13	31	15N	3E	498
14	30	15N	3E	596
15	19	15N	3E	615
16	25	15N	2E	79
17	26	15N	2E	55
18	23	15N	2E	140
19	24	15N	2E	165
20	13	15N	2E	40
21	14	15N	2E	170
22	22	15N	2E	60
23	15	15N	2E	210
24	16	15N	2E	165
25	10	15N	2E	85
26	17	15N	2E	40
27	9	15N	2E	239.24
28	8	15N	2E	381.36
29	7	15N	2E	80
30	5	15N	2E	637
31	12	15N	1E	640
32	1	15N	1E	435
33	11	15N	1E	640
34	2	15N	1E	640
35	10	15N	1E	640
36	3	15N	1E	640
37	9	15N	1E	640
38	4	15N	1E	640
39	5	15N	1E	640
40	6	15N	1E	609.94
41	32	15N	1E	640
42	29	15N	1E	640
43a	30	15N	1E	616.30
43b	27	15N	1W	640.8
44	24	15N	1W	640
45	19	15N	1E	393.84
46	17	15N	1E	640
47	18	15N	1E	464.07
48	13	15N	1W	300.33
49a	32	15N	1W	160
49b	20	16N	2E	480
49c	17	16N	2E	320
50	25	15N	3E	640

51	24	15N	3E	640
52	13	15N	3E	640
53	12	15N	3E	640
54	1	15N	3E	640
				<hr/>
			Subtotal:	27,070.48+
55 (northeast of	2	16N	3E	300
56 right bank of	1	16N	3E	610
57 Knik River)	12	16N	3E	95.10
			Subtotal:	1,005.1
			TOTAL	28,075.58+

Lands State Receives and Eklutna Relinquishes

Township 17 North, Range 3 East, Seward Meridian

Section 15: All
Section 16: Lot 1, Lot 2
Section 17: S2 of Lots 1 and 2
Section 19: S2SW4, NE4SW4, SW4SE4
Section 20: Lot 1, Lot 2, Lot 3, Lot 4
Section 21: Lot 1, Lot 2, Lot 3, Lot 4
Section 22: All
Section 23: All
Section 25: All
Section 26: Lot 1
Section 27: Lot 1 and Lot 2 excluding USS 3199
Section 28: Lot 1, Lot 2, Lot 3
Section 29: Lot 1, Lot 2
Section 30: NW4NW4, E2NW4, NE4SW4, W2NE4, N2SE4
Section 31: Lot 2* and S2, E2NE4, SW4NE4, SE4NW4 of
Lot 1
Section 32: Lot 1, Lot 2*
Section 33: Lot 1, Lot 2, Lot 3*
Section 34: Lot 1, Lot 2, Lot 3*, excluding USS 3199
Section 35: Lot 1 excluding USS 3199
Section 36: All

*NOTE: See Section IV of this Agreement

Mental Health Lands - Lands State Will Receive

Township 14 North, Range 1 West, Seward Meridian

Section 5: Lot 1, Lot 2, Lot 3, S2NE4, SE4NW4, SE4SW4,
S2SW4SE4, SE4SE4, NE4SE4, N2NW4SE4

Township 16 North, Range 1 West, Seward Meridian

Section 1: Lot 1, Lot 2, Lot 3, E2, E2SW4, SW4SW4

Section 2: Lot 5, Lot 6, Lot 7, Lot 8

Section 3: Lot 5

Section 9: All, if any

Section 10: Lot 1, Lot 2, Lot 3, Lot 4, Lot 5,
Lot 6, SE4NE4, NW4SE4

Section 11: Lot 1, Lot 2, Lot 3, Lot 4, NW4, NW4NE4

Section 12: Lot 1, Lot 2, Lot 3, Lot 4

Section 36: Lot 2, Lot 3, SE4SW4, SW4SE4, E2SE4

Township 15 North, Range 2 East, Seward Meridian

Section 4: All

Section 6: Lot 1, Lot 2, Lot 3, Lot 4, SE4NE4,
NE4NE4SE4, N2NW4NE4SE4, and other
state selected and available lands

Section 7: Portion of Lot 1 excluding SE4NE4 and
NE4SE4

Section 9: N2NE4 of Lot 1

Section 10: N2, SE4, NE4SW4 of Lot 1

Section 11: All

Section 13: N2, SE4, E2SW4, NW4SW4

Section 14: E2NE4, NW4NE4, N2NW4 of Lot 1

Section 15: NE4NE4 of Lot 1

Section 16: SW4, S2SE4, NW4SE4, SW4NW4 of Lot 1

Section 17: NW4NE4, S2NE4, SE4, W2

Section 18: All

Section 22: S2, NW4, S2NE4 of Lot 2
 Section 23: W2SW4, SE4SW4 of Lot 3
 Section 24: NE4, N2SE4, SE4SE4 of Lot 1
 Section 26: W2, SE4, SW4NE4 of Lot 2
 Section 35: All
 Section 36: W2SW4 of Lot 2

Township 16 North, Range 1 East, Seward Meridian

Section 2: Portion lying west of the railroad
 Section 3: Lot 1, excluding portions lying east of the Alaska Railroad centerline, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, NW4, NW4NE4
 Section 4: Lot 1, Lot 2, E2, NE4NW4, S2NW4, SW4
 Section 5: Lot 1, NW4NE4, S2NE4, SE4, W2
 Section 6: Lot 1, Lot 2, Lot 3, Lot 4, E2W2, W2
 Section 7: Lot 1, Lot 2, Lot 3, Lot 4, N2NE4, NE4NW4, Lot 1 of island and all other islands, if any
 Section 8: Lot 1, Lot 2, Lot 3, Lot 4 and all other islands, if any
 Section 9: Lot 1, Lot 2, Lot 3, Lot 4 and all islands, if any
 Section 10: Lot 1, Lot 2, Lot 3, Lot 4, Lot 6, and all other islands, if any, excluding portion of lands lying east of railroad (if any)
 Section 15: That portion of Lot 6 lying west of the centerline of the Alaska Railroad
 Section 21: S2SE4, SE4SW4
 Section 22: S2S2
 Section 23: S2S2
 Section 24: S2S2

- Section 25: All
- Section 26: All excluding Patent No. 50-75-0024
- Section 27: That portion lying North and East of and including, the Eklutna Lake Road right-of-way, excluding Public Land Order 2787 and Patent No. 50-74-0023
- Section 31: All
- Section 32: S2, SW4NW4
- Section 33: S2S2
- Section 35: That portion lying North and East of and including, the Ekluant Lake Road right-of-way, excluding Patent Nos. 50-75-0025 and 50-76-0139
- Section 36: All

Township 16 North, Range 2 East, Seward Meridian

- Section 1: Lot 5
- Section 2: Lot 10 and Lot 9 west of the Old Glenn Highway Bridge, excluding USS 2491
- Section 3: Lot 9
- Section 4: Lot 1
- Section 7: Lot 6
- Section 8: Lot 8, Lot 9
- Section 9: Lot 5 of USS 3568, Lot 5
- Section 10: Lot 3
- Section 11: Lot 1
- Section 12: All
- Section 16: Lot 1
- Section 17: Lot 1
- Section 19: S2
- Section 20: NE4

Mental Health Lands - Lands Eklutna Will Receive

Township 14 North, Range 2 West, Seward Meridian

Section 11: Lot 15, Lot 16, Lot 17

Township 16 North, Range 1 West, Seward Meridian

Section 22: Lot 1

Section 25: SW4

Section 26: All, excluding Public Land Order 2672 and
Public Land Order 755

Section 27: Lot 1, Lot 2, Lot 3, Lot 4, SE4NE4,
SE4, E2SW4, SW4SW4

Section 28: Lot 1, Lot 2, Lot 3, SE4SE4

Section 32: Lot 1, Lot 2, Lot 3, Lot 5

Section 33: Lot 1, Lot 2, Lot 3, Lot 4, E2, SE4SW4,
E2NW4, SW4NW4

Section 34: All

Section 36: NE4, E2NW4, NE4SW4, NW4SE4

Township 16 North, Range 1 East, Seward Meridian

Section 1: All

Section 2: All excluding that portion (if any) lying
west of the centerline of the railroad

Section 3: That portion lying east of the centerline
of the railroad

Section 10: That portion (if any) lying east of the
centerline of the railroad

Section 11: All excluding that portion (if any) lying
west of the centerline of the railroad

Section 12: All

Section 13: N2SW4

Section 14: All

Mental Health Lands - Lands Eklutna Will Receive
Township 14 North, Range 2 West, Seward Meridian

Section 11: Lot 15, Lot 16, Lot 17

Township 16 North, Range 1 West, Seward Meridian

Section 22: Lot 1

Section 25: SW4

Section 26: All, excluding Public Land Order 2672 and
Public Land Order 755

Section 27: Lot 1, Lot 2, Lot 3, Lot 4, SE4NE4,
SE4, E2SW4, SW4SW4

Section 28: Lot 1, Lot 2, Lot 3, SE4SE4

Section 32: Lot 1, Lot 2, Lot 3, Lot 5

Section 33: Lot 1, Lot 2, Lot 3, Lot 4, E2, SE4SW4,
E2NW4, SW4NW4

Section 34: All

Section 36: NE4, E2NW4, NE4SW4, NW4SE4

Township 16 North, Range 1 East, Seward Meridian

Section 1: All

Section 2: All excluding that portion (if any) lying
west of the centerline of the railroad

Section 3: That portion lying east of the centerline
of the railroad

Section 10: That portion (if any) lying east of the
centerline of the railroad

Section 11: All excluding that portion (if any) lying
west of the centerline of the railroad

Section 12: All

Section 13: N2SW4

Section 14: All

- Section 15: That portion lying south of the Knik River and that portion lying North of the left bank of the Knik River and East of the centerline of the railroad.
- Section 16: That portion lying south of the Knik Arm
- Section 17: Lot 1, Lot 2
- Section 20: Lot 1, Lot 2, NE4NE4, S2NE4, SE4NW4, S2
- Section 21: N2, N2S2, SW4SW4
- Section 22: N2, N2S2
- Section 23: N2, N2S2
- Section 24: N2, N2S2
- Section 27: That portion lying South and West of Eklutna Lake Road right of way excluding Patent No. 50-74-0028 and Public Land Order 2787 as amended
- Section 28: All, excluding Patent No. 50-74-0028 and Public Land Order 2787 as amended
- Section 29: S2NE4, NW4, S2
- Section 32: NE4, N2NW4, SE4NW4
- Section 33: N2, N2S2
- Section 34: All
- Section 35: That portion lying south and west of the Eklutna Lake Road right of way excluding Patent Nos. 50-75-0025 and 50-76-0139

Township 16 North, Range 2 East, Seward Meridian

- Section 1: All islands, if any
- Section 4: All south of right bank of Knik River
- Section 5: All
- Section 6: All
- Section 7: All excluding Lot 6

Section 8: All, excluding Lot 8, Lot 9, and USS 3234
and USS 3243

Section 9: All north of left bank of Knik River

Section 10: All north of left bank of Knik River

Section 11: Lot 2

Eagle River

12

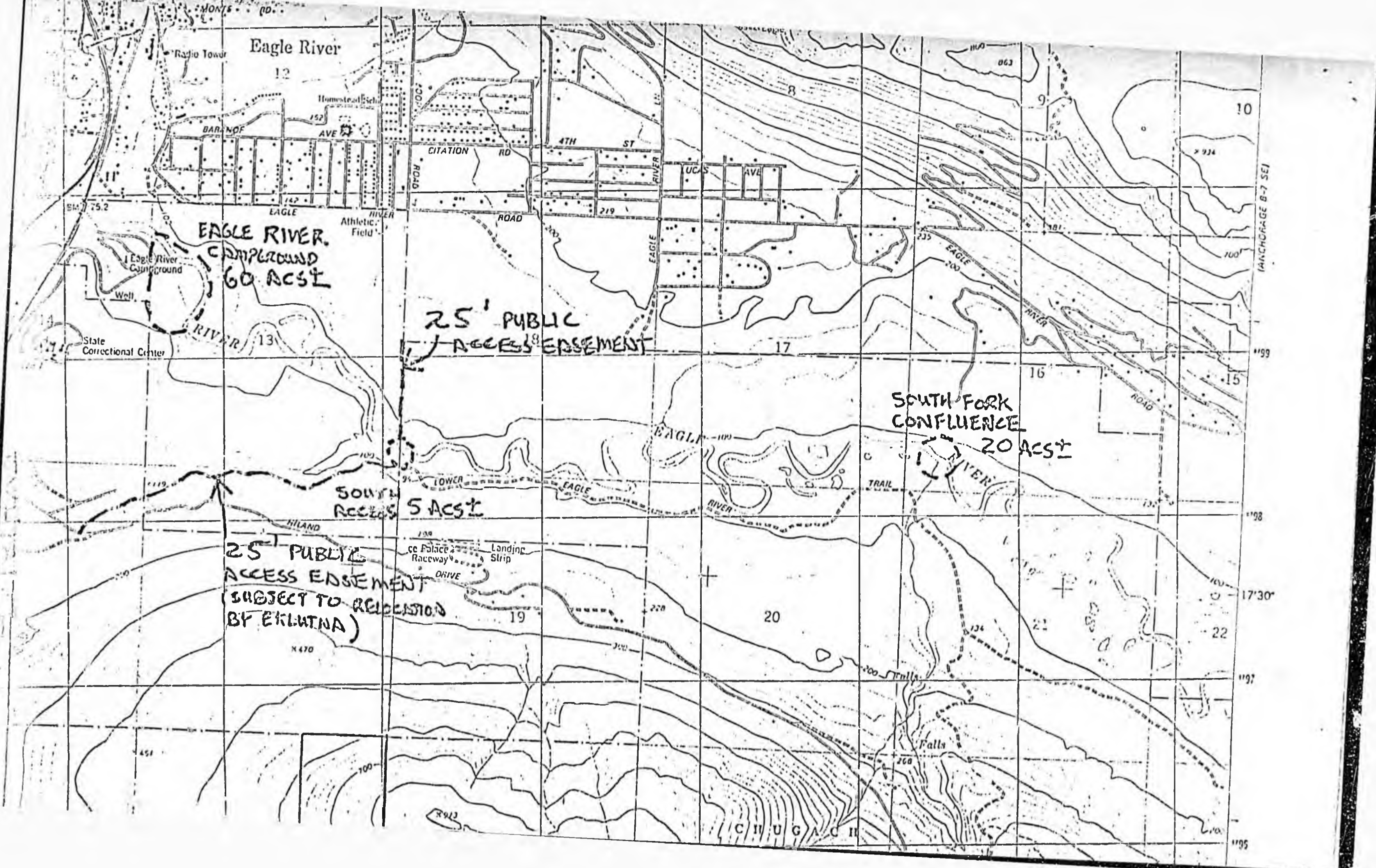
EAGLE RIVER
COMPLOUND
60 ACST

25' PUBLIC
ACCESS EASEMENT

SOUTH FORK
CONFLUENCE
20 ACST

SOUTH
ACCESS
5 ACST

25' PUBLIC
ACCESS EASEMENT
(SUBJECT TO REVERSION
BY EKLUTNA)



ADDENDUM

I hereby approve the March 15, 1982, Agreement between the State of Alaska, the Municipality of Anchorage and Eklutna, Inc. pursuant to the provisions of Section 1425 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2371.

By



John W. Katz, Commissioner
Department of Natural Resources
State of Alaska

FISHERIES

SUBCOMMITTEE



Alaska State Legislature

Senate Special Committee on Alaska Fisheries

Official Business

Dick Eliason, Chairman
Nels Anderson
Bob Mulcahy

JAN 10 1983

Pouch V
State Capitol
Juneau, Alaska 99811

465-4916
465-4917

Jan. 16, 1983

MEMORANDUM

TO: The Senate Resources Committee *AW*

FROM: The Senate Special Committee on Alaska Fisheries

Following the 1982 Interim Session project of this committee, and from information gathered through a series of state wide public hearings, the following recommendations are made for the Thirteenth Alaska Legislative Session:

1. That hearings be held by the Resources Committee to determine the feasibility of returning the Division of Fish and Wildlife Protection to the Department of Fish and Game.
2. That hearings be held by the Resources Committee on the feasibility of having full time membership on the Board of Fish.
3. That long term low interest loans for seafood processors are in the best interest of the fishing industry.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI

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

Senate Committee on Resources

TO: Senator Mulcahy, Chairman
Subcommittee on Fisheries

FROM: Senator Fahrenkamp, Chairman
Senate Resources Committee

RE: HCR 73

DATE: May 24, 1968

The attached bill has been referred to the Resources Committee. The committee is currently reviewing the bill and will report to the Senate on May 31, 1968.

Very truly yours,
Bettye Fahrenkamp, Chairman

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
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JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835



Senate Committee on Resources

TO: Senator Mulcahy, Chairman
Resources Subcommittee on Fisheries

FROM: Senator Fahrenkamp, Chairman
Senate Resources Committee

RE: SB 379, SB 391

The following bills have been referred to the Resources Committee. I am assigning them to the Subcommittee on Fisheries for consideration by the Subcommittee.

- SB 379 - An Act establishing a fisheries business tax credit.
- SB 391 - An Act relating to fees for, sales of, and collection of fees for sport fishing and hunting licenses and commercial fishing crewmember licenses.

cc: Senate Resources Committee members

TO: Senator Mulcahy, Chairman
Resources Subcommittee on Fisheries

FROM: Senator Fahrenkamp, Chairman
Senate Resources Committee

RE: SB 136

DATE: February 22, 1983

The following bill has been referred to the Resources Committee. I am assigning it to the Subcommittee on Fisheries for consideration by the Subcommittee.

SB 136 An Act relating to the operation of stationary fishing gear.

cc: Senate Resources Committee Members



Alaska State Legislature

Senate

Resources Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senator Mulcahy, Chairman
Fisheries Subcommittee

FROM: Senator Fahrenkamp, Chairman
Senate Resources Committee

RE: Referral of Fisheries Bills

DATE: January 28, 1983

Attached are copies of the following bills dealing with fisheries issues which have been referred to the Resources Committee:

- 1) SB 2 "An Act providing for a license exemption for commercial fishing vessels 24 feet or less." Ferguson
- 2) SB 12 "An Act relating to the maximum length of salmon seine vessels; and providing for an effective date." Ziegler
- 3) SB 39 "An Act authorizing the Board of Fisheries to establish a personal use fishery." V. Fischer
- 4) SB 52 "An Act relating to the licensing of commercial fishing; and providing for an effective date." Mulcahy
- 5) SB 73 "An Act relating to commercial fishing loans." Rules/Governor
- 6) SJR 7 "Opposing the imposition of a halibut moratorium and the establishment of a shares system for halibut in Alaska." Mulcahy
- 7) SJR 8 "Relating to Canadian requirements for Alaska commercial fishing vessels in Canadian waters." Ziegler, Eliason, Ray
- 8) SJR 10 "Requesting rejection and renegotiation of the proposed United States-Canada salmon interception treaty." Eliason, Ziegler, Ray

SB 191 Taxation of fish processors. Ferguson.
 HJR 19 US observers on foreign fishing vessels - GWS send only
 I am assigning the above bills and resolutions to the Fisheries Subcommittee for consideration by the Subcommittee.

cc: Senate Resources Committee Members

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI

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



Senate Committee on Resources

TO: Michael
Senator Mulcahy's Office

FROM: Sandra
Senate Resources Committee

RE: Bills in Fisheries Subcommittee

DATE: January 6, 1983

The following bills and resolutions were assigned to the Resources Subcommittee on Fisheries during the 1983 legislative session, and as of this date have not been brought before the full Resources Committee for action:

- SB 12 "An Act relating to the maximum length of salmon netting vessels; and providing for an effective date."
- SB 39 "An Act authorizing the board of fisheries to establish a personal use fishery."
- SB 191 "An Act relating to taxation of fish processors."
- HB 19 "Relating to U.S. observers on foreign fishing vessels."

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
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ARLISS STURGULEWSKI

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

Senate

Committee on Resources

Chairman: Senator [Name], Chairman
Resources Subcommittee
Member: Senator [Name], Chairman
Subcommittee [Name]
January 10, 1984
S 1234

The Committee on Resources has the honor to advise you that the following bill has been referred to the subcommittee for consideration:

Bill No. 1234, entitled [Title of Bill]

It is requested that you advise the committee of any changes or amendments you may wish to make.

FORESTRY

BOARD

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., vice Chairman
DICK ELIASON
PAUL FISCHER
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(907) 465-3834
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Senate Committee on Resources

MINUTES

January 27, 1984
3:04 pm

House Resources
Room 118, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chairman
Senator Ziegler, Vice Chair
Senator Eliason
Senator P. Fischer
Senator Mulcahy
Senator Sturgulewski

Rep. Ringstad, Co-Chair
Rep. Shultz, Co-Chair
Rep. Goll
Rep. Larson
Rep. Liska

CALENDAR

Briefing by the Alaska Board of Forestry. JOINT MEETING WITH HOUSE RESOURCES COMMITTEE.

Mike Barton, Alaska Board of Forestry, testified that the Board was fulfilling the statutory requirement of reporting to the Legislature its recommendations on state forestry issues (AS 41.17.047). The forest products industry is the third largest in the state, employs over 5,000 people and the value of its exports equals that of the fishing industry. He praised the establishing of the State Forest system, providing a stable land base, contributing to the development of the industry.

Bob Ellis, Alaska Board of Forestry, reported that the Department of Natural Resources has satisfactorily followed the mandate of the Forest Practices Act, embracing the concept of "multiple resource use".

Richard W. Groff, Alaska Board of Forestry, recommended that the state cover federal budget shortfalls in the "service forestry" program. He also spoke in support of SB 202, establishing the Yakataga State Forest.

Samuel J. Bacino, Alaska Board of Forestry, discussed the Board's three resolutions. One supported the state's takeover of fire protection of 70 million acres in the McGrath area, formerly protected by BLM. Another endorsed DNR's method of classifying lands by the amount of fire protection needed. The third supported SB 202, establishing the Yakataga State Forest. The Board will be recommending amendments to SB 366, relating to fire protection.

John Sturgeon, Director, Division of Forestry, Department of Natural Resources, discussed the role and the future plans of the Alaska Board of Forestry. The Board will be reviewing management plans for the Haines and Tanana Valley State Forests, guiding the marketing of forest products, planning transportation systems for combined resource development, and reviewing taxation of forested land. He also answered questions about the Icy Bay timber sale.

Stephen Waste, United Fishermen of Alaska, testified that they will be making recommendations to the Board on the Haines State Forest management plan in the near future.

The meeting adjourned at 3:48 pm.



Official Business

Alaska State Legislature House Resources Committee

SIGN-IN JAN 27, 1984

BOARD OF FORESTRY

NAME	ADDRESS	PHONE	REPRESENTING
Samuel J. GALINO	99503 903 W. Northern Lights Anch	(907) 276 1080	Native Corporations
RICHARD W. GROFF	Box 911, CORDOVA	724-3354	BOARD OF FORESTRY
MIKE BARTON	POB 1628, INU	586-7263	USAF Bd of Forestry
Bob Miller	Box 2976, S. Anch	247-8750	Board of Forestry
John STURGEON	SRA Box 316M Anch, AK	345-2299	State Forestry - DNR
Stephen Wainwright BRUCE WALLACE	319 Seward St.	1162 S. Wainwright 586-7843	UNITED FISHERMEN OF ALASKA

be a natural resources land manager with generally accepted educational credentials, familiar and experienced with the renewable and nonrenewable resources the values of forest land and the products, benefits, and services obtained from them.

(c) The commissioner shall administer this chapter and is authorized and encouraged to delegate responsibilities for carrying out this chapter to the state forester. (§ 1 ch 108 SLA 1978; am § 42 ch 113 SLA 1981; am § 5 ch 91 SLA 1983)

Revisor's notes. — In 1983, this section was reorganized into present subsections (a)-(c) and two other sections. Present (b) was formerly part of (a) and present (c) was formerly designated (b). Former subsections (d)-(i) and (k) were renumbered as AS 41.17.055(a)-(g) and former subsection (j) was renumbered as AS 41.17.900(d).

Effect of amendments. — The 1981 amendment substituted "may" for "shall" and "forestry" for "forest, land, and water management" in the first sentence of subsection (a).

The 1983 amendment repealed former subsection (c) of this section.

Opinions of attorney general. — The allocation of responsibility for administration of the forest practices regulations in coastal management consistency determinations is sufficiently unclear that it

seems appropriate for resolution by the adoption of regulations since differing policy considerations emphasized in the Forest Practices Act, the Coastal Management Act, and proposed permit reform regulations will be served to a greater or lesser extent by assigning responsibility for interpreting and applying the forest practices regulations to more than one agency and since a particular result is not compelled under the various pieces of authorizing legislation. April 20, 1981, Op. Att'y Gen.

The adoption of forest practices regulations by the Department of Natural Resources in 11 AAC 95 has completely preempted the coastal policy council's regulations, 6 AAC 80.100, in regulating timber harvest and processing in the coastal area. April 20, 1981, Op. Att'y Gen.

Sec. 41.17.030. Responsibilities of division. (a) The division shall manage state forests and, as directed by the commissioner, provide technical advice to the division of lands on sound forest practices necessary to ensure the continuous growing and harvesting of commercial forest species on other state land.

(b) The division shall regulate operations on private forest land as authorized by the provisions of this chapter or state law.

(c) The division shall provide public information and assistance regarding forest practices and timber management generally. (§ 1 ch 108 SLA 1978)

Opinions of attorney general. — The Department of Natural Resources, under the authority of AS 41.17.030(j), cannot preempt the regulatory authority of the

commissioner of fish and game under AS 16.06.870 over nonpoint source pollution of anadromous streams caused by logging activities. March 4, 1982, Op. Att'y Gen.

Sec. 41.17.041. Board of forestry. (a) The Board of Forestry is established in the Department of Natural Resources, division of forestry.

(b) The board is composed of 14 members appointed by the governor from nominations submitted from the groups listed in (c) of this section. The board shall elect its own presiding officer.

(c) Seats on the board shall be allocated as follows:

- (1) the state forester ex officio has one seat;
- (2) a nominee of the regional forester, United States Forest Service has one seat;
- (3) a nominee of the Society of American Foresters has one seat;
- (4) nominees of Native corporations owning or likely to own commercial timber stands have four seats;
- (5) a nominee of the Alaska Loggers' Association or of a timber processor doing business in Alaska has one seat;
- (6) a nominee of an Alaskan environmental group has one seat;
- (7) a nominee of the Alaska Coastal Management Council has one seat;
- (8) a nominee of unions engaged in processing forest products has one seat;
- (9) a nominee of the United Fishermen of Alaska has one seat;
- (10) a nominee of the Alaska Miners' Association has one seat; and
- (11) a member from the public at large has one seat.

(d) Each group entitled to make nominations under (c) of this section shall submit three names to the governor for the vacancy on the board it is entitled to make nominations for.

(e) Members of the board, except the state forester, do not serve at the pleasure of the governor. (§ 1 ch 108 SLA 1978; am § 87 ch 59 SLA 1982)

Revisor's notes. — Formerly AS 41.17.040(a)-(d), (g). Renumbered in 1983. *Effect of amendments.* — The 1982 amendment substituted "division of forestry" for "division of forest, land, water management" in subsection (a).

Sec. 41.17.043. Terms of office. The term of office of a member of the board is three years; the governor shall make the initial appointments to the board in such a way that four nominations expire during 1980, four appointments expire during 1981, and three appointments expire during 1982. The state forester serves an indefinite term, ex officio. (§ 1 ch 108 SLA 1978)

Revisor's notes. — Formerly AS 41.17.040(e). Renumbered in 1983.

Sec. 41.17.045. Removal of members. (a) The governor may initiate the removal of a board member for inefficiency, neglect of duty, or misconduct in office by delivering to the member a written copy of the charges and giving the member an opportunity to be heard in person or by counsel at a public hearing before the governor or the governor's designee on at least 10 days written notice by registered mail. The member has a right of confrontation and cross-examination of witnesses testifying.

(b) The removal is effective 15 days after the governor files a complete statement of all charges made against the member and the findings on those charges, in the main office of the board, except that a member may appeal the findings to the superior court. The court shall limit its review to a determination of whether the findings on the charges are substantiated by the evidence presented. The removal is suspended for any period of time during which an appeal from the findings of the governor or the governor's designee is pending. (§ 1 ch 108 SLA 1978)

Revisor's notes. — Formerly AS reorganized into two subsections in 1983.
41.17.040(h). Renumbered and

Sec. 41.17.047. Powers and duties of board. The board shall review and comment to the commissioner on regulations proposed for adoption under this chapter. The board shall also report to the legislature its recommendations for changes in the provisions of this chapter and its comments on the regulations adopted by the commissioner under this chapter. It may also review and advise the legislature on the activities of the division. (§ 1 ch 108 SLA 1978)

Revisor's notes. — Formerly AS
41.17.040(f). Renumbered in 1983.

Sec. 41.17.055. Powers and duties of the commissioner. (a) The commissioner may designate and operate experimental and research forests on state land consistent with the limitations of AS 38.05.300. Laboratories and other facilities may be employed in conjunction with those forests.

(b) The commissioner may establish and maintain forest vegetation nurseries and greenhouses for planting stock to be made available, with or without charge, to organizations, institutions, government agencies, individuals, and businesses for reforestation, afforestation, and related purposes.

(c) The commissioner is authorized to undertake cooperative forestry programs, extension services and education programs, and to otherwise offer a full range of professional management services to the interested public. When the commissioner considers it beneficial, the commissioner may participate in federal assistance programs by accepting assistance in whatever form offered.

(d) The commissioner may develop proposed regulations under this chapter as part of the state program for control of nonpoint source pollution under the Federal Water Pollution Control Act, as amended, and shall seek to enter into a cooperative agreement with the commission of environmental conservation for that purpose. However, the Department of Environmental Conservation is the lead agency for water quality and control of nonpoint source pollution under that Act,

ALASKA BOARD OF FORESTRY

<u>ER</u>	<u>REPRESENTING</u>	<u>LOCATION</u>	<u>ADDRESS</u>	<u>TERM EXPIRES</u>
sturgeon	State of Alaska	Anchorage	Pouch 7-005 Anch. 99510	(ex officio)
ike Barton	USFS	Juneau	P.O. Box 1628 Juneau 99801	1/86
	Native Corp.		Koniag Corp.	
	Native Corp.	Fairbanks	Doyon, 201 1st Fairbanks 99701	
Jim Rynearson	A. L. A.	Sitka	Ak. Lumber & Pulp Box 1050 Sitka 99835	1/86
Bob Ellis	Environmental	Sitka	Box 2966 Sitka 99835	1/85
Dick Groff	Coastal Mgmt.	Cordova	P.O. Box 911 Cordova 99574	1/85
Bruce Wallace	United Fishermen	Ketchikan	P.O. Box 8572 Ketchikan 99901	1/85
Fred Boness	Public-at-Large	Anchorage	420 'L' Street Suite 404 Anchorage 99501	1/85
Walt Begalka	S. A. F.	Ketchikan	400 Mission Street Suite 205 Ketchikan 99901	1/86
Bob Urata	Unions	Wrangell	P.O. Box 692 Wrangell 99929	1/86
Sam Bacino	Native Corp.	Anchorage	903 W. No. Lights Anchorage 99503	1/87
Joe Wilson	Native Corp.	Juneau	Box 1534 Juneau 99801	1/87
Darryl Sickles	Alaska Miners	Anchorage	2550 Denali, Suite 1000 Anchorage 99501	1/86

JOHN STURGEON, DIRECTOR, DIVISION OF FORESTRY, DNR

BOARD OF FORESTRY ESTABLISHED IN 1979 (AS 41.17.041)

14 MEMBERS APPOINTED BY GOVERNOR (SEE ATTACHED LIST)

DUTIES:

COMMENT TO COMMISSIONER ON REGULATIONS

REPORT TO LEGISLATURE RECOMMENDATIONS FOR CHANGES

IN STATUTE

THE MANAGEMENT PLAN FOR THE TANANA VALLEY STATE FOREST,
WHICH MUST BE PREPARED WITHIN 3 YEARS, REQUIRES REVIEW
BY THE BOARD OF FORESTRY.

STATE OF ALASKA
BOARD OF FORESTRY

1172.1

January 24, 1984

The Honorable Bettye Fahrenkamp
Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear ~~Senator Fahrenkamp~~ *Bettye*:

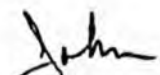
On January 27, 1984 at 3:00 p.m., the Alaska Board of Forestry will appear before the joint House and Senate Resources Committees. The Board of Forestry is a diverse group made up of 14 members, including representatives from four Native corporations (Doyon, Koniag, Sealaska, and Chugach), the Alaska Loggers Association, United Fishermen of Alaska, Society of American Foresters, Alaska Miners Association, U.S. Forest Service, forest products unions and one Public-at-Large member. The Board was formed by the legislature in 1979 to guide State Forestry, recommend changes as needed to the Forest Practices Regulations and Statutes, and provide advice and recommendations to the Commissioner of the Department of Natural Resources.

In addition, the Board is mandated under AS 41.17.047 to report to the Legislature its recommendations on state forestry issues. In the day and a half previous to meeting with you, the Board will receive briefing on forestry issues important to Alaska. We all speculate on what to do when our oil revenues begin declining and try to envision what our economy will be based on when the oil is gone. The Board is confident that, if properly guided, the forest products industry can do much to help strengthen and diversify Alaska's economy.

You are encouraged to attend this important committee meeting. This distinguished group can offer some very useful advice on the state's third largest industry and how to assure its growth and prosperity in the future.

Thank you for your support.

Sincerely,


John L. Sturgeon
State Forester

INSTREAM

FLOW

Instream flow

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGI/LEWSKI



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STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

May 1, 1983

Memo

To: Billy Berrier, Director Division of Legal Services

From: Senator Bettye Fahrenkamp

Subject: Review of Instream Flow law

On April 18, the Resources Committee conducted an oversight hearing of the so-called Instream Flow law (AS 46.15.145) and pending regulations. Following the hearing the Alaska Power Authority sent the attached letter outlining a possible "loophole" in the law which might allow the federal government to avoid a state adjudication process in the case of "reserved" water rights.

I would greatly appreciate your comments and recommendations concerning the issue raised by the APA and the attached draft legislation.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURCULEWSKI



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STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

Memo

To: Senate Resources Committee Members
From: Senate Resources Committee Staff
Date: April 29, 1983
Subject: Follow-up to Instream Flow Oversight Hearing,
April 18, 1983

Background

The so-called instream flow law was passed in 1980 in response to concerns that:

1. The Department of the Interior might assert "unreserved" water rights to state waters through federal courts outside Alaska under a theory of law articulated by then Interior Solicitor Krulitz. (This theory was subsequently reversed by the new Administration.)
2. There were important uses of water which depended on a minimum level of water to be left in the stream, including: fish migration and spawning, recreation, navigation, and maintenance of water quality.

The law amended the existing Water Use Act to provide a procedure for reservation of instream waters which would complement the existing system for diversion or out-of-stream appropriations of water. Draft regulations implementing the law are currently being reviewed by the Department of Law.

Hearing Summary

On April 18 we heard testimony from the DNR, ADF&G, DEC, Department of Law, Alaska Miners Association, Southeast Alaska Gillnetters Association, and the Alaska Environmental Lobby on the 1980 statute establishing a system for reservation of instream flow waters and the proposed implementing regulations.

With the exception of the AMA, all supported the basic intent and operation of the instream flow law. Although the AMA testified that several of their concerns had been met in the law and the regulations, the membership supported repeal of the law.

All believed that, despite the recent reversal of the "Krulitz Decision" asserting a concept of unreserved federal water rights, it was still important to maintain a mechanism to force the federal government to pursue any claims to water through a state adjudication process as provided in the instream flow law.

Concerns about the law and the proposed regulations centered on the following:

1. That the law provided a mechanism which could be abused by agencies and individuals who could "blanket" every stream in the state with an instream flow reservation which would block future alternative uses of the waters, including public water supplies or industrial use.

Staff Analysis

At the time of passage of the law this concern focused on the presence of maps by the ADF&G outlining anadromous streams which might be used as a basis for making instream flow reservations. These maps were considered overly extensive and not based on actual spawning or migration observations. An agreement was made at the time of passage that ADF&G would revise these maps in line with actual investigation. These maps have now been revised and the AMA reports that it is generally satisfied that streams or segments of streams not supporting anadromous fish spawning or migration have been deleted.

Additionally, the regulations proposed to implement the law require that the burden of proof be placed on the applicant to demonstrate: the quantity of water needed for the particular instream use; the time of day or year needed; the methodology used for quantifying the needed water; data substantiating the need for the water. These requirements have been generally accepted as sufficient (if not onerous) to prevent "frivolous" applications for instream flow reservations.

The regulations also provide for a review of instream flow reservations at least every 10 years to ensure that the reservation is still being used and is needed. If the purpose for the original reservation is no longer needed or being met, the DNR Commissioner may revoke all

or a part of the reservation. This review could also be triggered by a subsequent application for another beneficial water use.

2. That the instream flow law does not provide for reservations for other potential uses such as hydroelectric, industrial, or public water supply uses.

Staff Analysis

This was a point of much confusion. The instream flow law must be viewed in the context of being one part of the state's water appropriation system. Alaska's Water Use Act (AS 46.15) includes the traditional water appropriation process based on western water law which permits the granting of water rights to individuals for diversion or out-of-stream water on a first-come, first-served basis. The instream flow reservation law only amended the Water Use Act to provide for an additional, complementary system for instream uses of waters.

Industrial uses (e.g., placer mining), hydroelectric dams and reservoirs and public water supplies are all considered diversion or out-of-stream uses under Alaska's water law. As such, appropriations for water rights for these uses would continue to be made under the traditional water appropriation procedures outlined in AS 46.15. Appropriation or reservation of water under either out-of-stream or instream procedures would be subject to any previous appropriations or reservations under either system.

However, unlike the out-of-stream system, instream reservations are not mutually exclusive or strictly additive. For example, the same minimum cfs (cubic feet per second) of water reserved for salmon spawning on a segment of stream could be reserved for recreational canoeing. Any water above the minimum flow to be left in the stream would, of course, be available for further appropriations or reservations.

3. That reservations of water can be applied for and granted to individuals or private groups.

Staff Analysis

The instream flow law states that a "person" can apply for an instream flow reservation in addition to state, federal or local agencies. The regulations also provide

for individuals or groups to apply for instream reservations and to receive certificates of reservations.

The question which has arisen in the Attorney General's office is two-fold:

- a. Should individuals physically receive a document granting an instream flow reservation or should such a reservation be "held" by the state?; and,
- b. If such a certificate were issued to an individual, would that represent a property right similar to a traditional water "appropriation" or represent a different type of symbolic "right"? The Alaska Constitution protects the former right and revocation or modification of such a right would require due process and just compensation procedures as in condemnation. The latter could presumably be revoked or modified at the discretion of the DNR Commissioner after statutory and regulatory procedures were followed.

Since the time of the hearing, the AG's office has concluded an examination of the legislative history of the instream flow law. From tapes of the House Resources Committee considerations, they have tentatively concluded that it was the Committee's intent that instream reservations would be physically issued to individuals. However, it was not clear whether certificates of "reservation" were to be treated like an "appropriation" as that term is used in statute and the Constitution.

As drafted currently, the regulations presumably do not treat a certificate of reservations as a property-right appropriation.

4. That a "loophole" in state law exists which might prevent the state from forcing the federal government to go through the state on some water right adjudications.

Staff Analysis

Attached is a letter from the Alaska Power Authority which summarizes the situation of "reserved" federal water rights for such federal reserved areas as national parks and wildlife refuges. Federal legislation apparently permits adjudication of such water rights in state courts if they are part of a basin-wide adjudication. Alaska statutes currently do not provide for basin-wide adjudication. APA has attached possible legislation

drafted by the Department of Law which would address this "loophole".

SUMMARY

There appear to be only two substantive ambiguities or omissions in the current instream flow law which have been brought to light: 1) It is not clear whether the legislature intended for a property-right type appropriation to be vested with a private-party applicant for instream flow waters; and, 2) There may exist a loophole in statute whereby the federal government might not be forced to use state water adjudication procedures in the case of "reserved" federal water rights (as opposed to the concept of "unreserved" water rights asserted by a former Interior Solicitor).

If the legislature takes no further action on the instream flow law, it is reasonable to expect that, based on the testimony of the DNR and Department of Law, the regulations will enable a "person" to apply for and receive a certificate of reservation for instream flow waters. However, this certificate would not be treated like an "appropriation" under the diversion or out-of-stream water rights system. Rather, the DNR could modify or revoke the certificate without compensation or due process type protections offered under the Constitution for regular property rights.

If the Committee feels that such instream flow reservations should be treated differently, or that clarification to support the proposed regulations and avoid possible litigation is needed, additional statutory changes are necessary and staff could seek draft language.

At this time we have no further information on the "reserved" water rights "loophole" outlined by the APA. Staff will ask the Division of Legal Services, the Department of Law, and contact the appropriate federal departments for more information on this. If it appears changes in state law are necessary or desirable, recommendations will be circulated to the Committee.

To paraphrase the DNR testifier, there may be other bears out there in the woods, but we won't know until we go out into them and gain experience with the new program.

pp:jm
enclosure

ALASKA POWER AUTHORITY

334 WEST 5th AVENUE - ANCHORAGE, ALASKA 99501

Phone: (907) 277-7641
(907) 276-0061

APR 25 1983

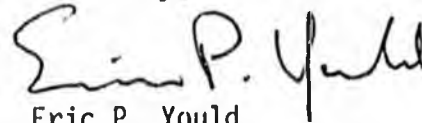
April 21, 1983

The Honorable Bettye Fahrenkamp
State Capitol
Capitol, Room 125
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

In reference to your letter of April 7, 1983, in which you requested my participation in discussions on the Alaska Water Use Act, I was not able to attend because of a conflicting Board meeting. I have had the opportunity to review the Law and Proposed Regulations and submit the attached testimony for the record. I apologize for not being able to attend the meeting but would be pleased to participate at a later date should other hearings be scheduled.

Sincerely,


Eric P. Yould
Executive Director

cc: Commissioner Richard Lyon, Chairman, w/a
All Board of Directors Members, w/a

Testimony of Eric P. Yould

Executive Director

Alaska Power Authority

Regarding the Alaska Instream Flow Law and Pending Regulations

Before the Senate Committee on Resources

April 18, 1983

MY TESTIMONY TODAY WILL CONCENTRATE ON THE ALASKA POWER AUTHORITY'S VIEW OF THE LEGISLATION ENACTED BY THE LEGISLATURE IN 1980 AND DNR REGULATIONS THAT ARE NOW PENDING TO IMPLEMENT THE LAW. FOR YOUR BACKGROUND THERE WAS SOME DISCUSSION OF THIS BILL AS PART OF A PACKAGE OF ENERGY RESOURCES LEGISLATION UNDER CONSIDERATION IN 1980 AND AT THAT TIME I HAD THE OPPORTUNITY TO DISCUSS THE LEGISLATION WITH DEPARTMENT OF NATURAL RESOURCES STAFF AND TO SIT IN IN SOME OF THE COMMITTEE HEARINGS AS THE BILL WAS CONSIDERED.

FROM THE MATERIALS PROVIDED WITH SENATOR FAHRENKAMP'S INVITATION OF APRIL 7, 1983, IT APPEARS THAT YOU HAVE SOME QUESTIONS ABOUT THE CONTINUING NEED FOR SUCH A LAW, SINCE THE U.S. ATTORNEY GENERAL, WILLIAM FRENCH SMITH, HAS REVISED AN OPINION ON FEDERAL WATER RIGHTS ORIGINALLY AUTHORED BY INTERIOR SOLICITOR KRULITZ DURING THE CARTER ADMINISTRATION. MY SHORT ANSWER TO SUCH A QUESTION IS YES FOR TWO REASONS:

- 1) THE OPINION OF U. S. ATTORNEY GENERAL SMITH IS JUST AS SUBJECT TO REVISION BY SUCCEEDING ADMINISTRATIONS AS WAS THE EARLIER KRULITZ OPINION. IN THE ABSENCE OF STATE ADMINISTRATIVE PROCEDURES TO GOVERN INSTREAM USES OF WATER WE WOULD FIND OURSELVES SUBJECT TO ADJUDICATION OF "NON-RESERVED" FEDERAL WATER RIGHTS IN FEDERAL COURTS WHERE STATE CONTROL WOULD BE MINIMAL.

- 2) EVEN IF ATTORNEY GENERAL SMITH'S REVISIONS STAY INTACT IN THE

FUTURE, FEDERAL AGENCIES STILL RETAIN BROAD MANAGEMENT AUTHORITIES FOR LANDS AND WATERS UNDER THEIR JURISDICTION. WHERE STATE PROCEDURES EXIST FOR MANAGING ITS WATER RESOURCES, THEN THE FEDERAL AGENCIES WOULD STILL BE OBLIGATED TO COMPLY WITH STATE LAW. THE LAW AND ITS REGULATIONS CREATE A CLEAN PROCESS FOR HANDLING ANY SUCH CLAIMS FOR INSTREAM WATER NEEDS AND I FEEL MORE COMFORTABLE IF THE FEDS MUST PLAY BY OUR STATE'S RULES.

I MUST ALSO EMPHASIZE THAT THERE ARE OTHER BENEFITS UNDER THE LAW, UNRELATED TO ANY FEDERAL-STATE ISSUES. FOREMOST IS ONE PROVIDING MORE OBJECTIVITY IN WATER MANAGEMENT DECISIONS THAT AFFECT DEVELOPERS SUCH AS THE POWER AUTHORITY. DURING FEASIBILITY STUDIES, DESIGN, LICENSING AND CONSTRUCTION OF PROJECTS THE POWER AUTHORITY ACTIVITIES ARE SUBJECT TO NUMEROUS PERMITS AND STIPULATIONS. SOME OF THESE PERMITS AND STIPULATIONS DIRECTLY ADDRESS WATER FLOW RELEASES. WE NORMALLY CONDUCT EXTENSIVE HYDROLOGIC, TEMPERATURE, BIOLOGICAL, AND OPERATIONS STUDIES TO

DEVELOP THE DATA TO HELP MAKE INFORMED DECISIONS ON SUCH ISSUES. HOWEVER, THERE HAVE BEEN OCCASIONS WHERE STIPULATIONS HAVE BEEN PROPOSED, OR ATTACHED, TO PROJECT OPERATING CONDITIONS WHICH MAY BE MORE A REFLECTION OF AN AGENCY STAFFER'S " GUT FEELING " AND ARE IN CONFLICT WITH OTHER INTERPRETATIONS OF THE DATA AT HAND.

IN THIS REGARD, THE LEGISLATION AND PROPOSED REGULATIONS COULD HELP SOLVE SOME OF THESE CONFLICTS BY REQUIRING THOSE WISHING TO RESERVE WATER FOR INSTREAM USES TO PROVIDE THE NECESSARY DATA FOR THE ADMINISTERING AGENCY (DNR) TO MAKE AN OBJECTIVE DECISION ON THE MERITS OF ANY COMPETING INSTREAM OR OUT-OF-STREAM USES. IN ESSENCE, THE "SHOE IS PUT ON THE OTHER FOOT" TO JUSTIFY WHY CERTAIN RESERVATIONS OR STIPULATIONS MAY BE NECESSARY AND THE DEVELOPER HAS THE OPPORTUNITY TO RESPOND BEFORE THE ADJUDICATING AGENCY.

WHEN THE LEGISLATURE AMENDED THE BILL TO ALLOW "A PERSON" TO APPLY FOR AN INSTREAM RESERVATION WE WERE, AT FIRST, CONCERNED THAT THIS COULD

LEAD TO SOME FRIVOLOUS APPLICATIONS. HOWEVER, A REVIEW OF THE PROPOSED REGULATIONS SHOW THAT DNR HAS DEVELOPED STRINGENT CRITERIA FOR THE CONTENT OF SUCH AN APPLICATION SUCH THAT ONLY SERIOUS APPLICATIONS SHOULD SURVIVE THE EVALUATION PROCESS. SHOULD A PROPOSED RESERVATION APPEAR TO ADVERSELY AFFECT OTHER USES OF THE WATER, THE OPPORTUNITY EXISTS TO PROVIDE A REBUTTAL IN AN OPEN PUBLIC PROCESS BEFORE DNR. AS I INDICATED BEFORE, SUCH AN OPPORTUNITY IS SOMETIMES LACKING WHEN ONE NEEDS A PERMIT TO PROCEED IN A TIMELY MANNER.

ONE AREA OF WATER MANAGEMENT WHERE THE STATE IS STILL EXPOSED TO UNCERTAINTY IS THE SUBJECT OF FEDERAL " RESERVED " WATER RIGHTS THAT PERTAIN TO FEDERAL RESERVATIONS FOR PARKS, MONUMENTS, WILDLIFE REFUGES AND MILITARY PURPOSES. CONGRESS HAS PROVIDED ITS CONSENT - THROUGH THE MCCARREN AMENDMENT- FOR SUCH WATER RIGHTS TO BE ADJUDICATED AND QUANTIFIED IN STATE COURTS AS LONG AS THEY ARE ADJUDICATED AS PART OF A BASIN-WIDE ADJUDICATION. THE ALASKA STATE WATER STATUTES DO NOT PRESENTLY ENABLE SUCH A PROCEDURE AND THEREFORE WE WILL CONTINUE TO FACE

SOME UNCERTAINTY IN OUR ABILITY TO USE WATERS WHICH MAY FLOW THROUGH A FEDERAL RESERVE. THE DEPARTMENT OF LAW ONCE DRAFTED A PROPOSED BILL TO DEAL WITH THIS SITUATION AND IT IS ATTACHED TO MY TESTIMONY. PERHAPS IT WOULD BE PRUDENT FOR THE COMMITTEE RECEIVE INPUT FROM OTHERS AND CONSIDER SUCH LEGISLATION, THE LEGISLATION COULD CLOSE A LOOPHOLE AS FAR AS OUR STATE'S ABILITY TO REQUIRE THE FEDERAL GOVERNMENT TO SUBJECT FEDERAL WATER CLAIMS TO STATE REVIEW AND SCRUTINY.

IN SUMMARY, THE INSTREAM FLOW LEGISLATION AND PENDING REGULATIONS PROVIDE A PROCESS FOR BETTER RESOLVING WATER MANAGEMENT USES BY REQUIRING PRESENTATION AND INTERPRETATION OF DATA THROUGH AN OPEN PROCESS WHERE THE TECHNICAL AND ECONOMICAL MERITS OF THE PROPOSALS CAN BE OBJECTIVELY CONSIDERED.

I THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY AND FOR YOUR ATTENTION.

A BILL

For an Act entitled: "An act amending the Alaska Water Use Act at AS 46.15 to provide for enforcement of orders of the commissioner issued under that Act, to establish a procedure to enable judicial determination of basin-wide water rights adjudications, and providing for an effective date."

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

* Section 1. AS 46.15 is amended by addition of the following new section 46.15.165:

Sec. 46.15.165. BASIN-WIDE ADJUDICATIONS. (a) The commissioner may initiate the adjudication and quantification of all existing or claimed water rights in a water basin, river system, or other discrete hydrologic area. Notice of such action shall be mailed by certified mail to each existing appropriator or claimant of record with the department, and shall be published once each week for four consecutive weeks in a newspaper of general circulation in the vicinity of the area affected. The adjudication and quantification of all existing or claimed water rights shall proceed to a final administrative decision in accordance with the Administrative Procedures Act (AS 44.62) unless federal reserved or appropriated water rights or claims are asserted by the United States, by any of its component agencies, or by any person whose title to the land affected contains a restriction upon alienation imposed by the United States.

1 (b) If a federal right or claim referred to in (a) above is
2 asserted in any administrative proceeding under this section, the
3 commissioner shall thereafter proceed by way of an original action in
4 the superior court seeking a general adjudication and quantification of
5 all water rights, federal and non-federal, in the water basin, river
6 system, or hydrologic area affected. All water right holders and
7 claimants in the area affected, including any person or entity asserting
8 a federal right or claim, shall be joined in the action, pursuant to the
9 provisions of this section and 43 United States Code section 666. The
10 superior court shall proceed by way of a trial de novo, and may appoint
11 the commissioner or his designee as a special master to compile evi-
12 dence and take testimony, and to thereafter make recommendations to
13 the court regarding the issuance of a judicial decree finally adjudi-
14 cating and quantifying all existing water rights and claims in the area
15 which is a subject of the action. For these purposes, relevant records
16 and files which the department has compiled or obtained in its admini-
17 stration of this title and which pertain to the area affected shall be
18 admitted into evidence before the special master and the court, to-
19 gether with any other relevant documentation introduced during the
20 course of the proceedings.

21 (c) A final decree entered by the superior court pursuant to this
22 section shall have the effect of adjudicating, quantifying, and quiet-
23 ing all existing rights or claims to the water in the water basin,
24 river system, or other discrete hydrologic area which was the subject
25 of the adjudication, and shall be conclusive as to the facts stated
26 therein.

27 * Sec. 2. AS 46.15.250(a) is amended as follows:

28 Sec. 46.15.250. ENFORCEMENT AUTHORITY AND PROCEDURE. (a) The
29 following persons are peace officers of the state who [AND THEY] shall
30
31

enforce this chapter:

(1) a state employee authorized by the commissioner;

(2) a police officer of the state. (§ 1 ch 50 SLA 1966)

* Sec. 3. AS 46.15 is amended by addition of the following paragraph (b):

(b) In addition to any penalty which may be imposed pursuant to section 180 of this title for violation for any order issued under authority of this title, the department, after notice to the violator and opportunity for hearing (except in emergency situations in which case no hearing shall be required), may

(1) remove or abate unpermitted works of appropriation, diversion, impoundment or withdrawal, or may install corrective controls or control works after the violator's failure to do so pursuant to order. The violator shall be liable in a civil action for all costs of removal, abatement, or installation of corrective controls or control works, and all claims against the state by third parties for damages suffered as a result of such unpermitted works or unconstructed controls, including court costs and attorney fees;

(2) seek enforcement of any other order of the commissioner by appropriate civil action in the superior court.

(c) In order to carry out the provisions of this title, the department shall have the authority to inspect books, records, meters, gauges, well logs, works of appropriation, diversion, impoundment, withdrawal or control, and any other relevant information or physical condition, to enter onto private property at all reasonable times for such purposes, and to compel production of relevant information by administrative subpoena or other appropriate administrative order.

INTERTIE

CONTRACTS



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

RESOURCES COMMITTEE

March 28, 1983
5:35 p.m.

211 Beltz Room

MEMBERS PRESENT

Senator Fahrenkamp

Senator Vic Fischer

Meeting on the Special Committee of Anchorage-Fairbanks
Intertie Contracts

Senator Fahrenkamp asked that the record reflect that the 1:00 meeting was canceled in hopes that Senator Eliason's flight would arrive in time for a 5:30 meeting; however, the plane was late.

Avrum Gross, from the law firm of Gross & Burke, counsel to Senator Fahrenkamp, advised that he had reviewed all of the briefs now pending and had done independent research and concluded that it is contrary to the law for the Power Authority to award bids granting a bidder's preference to a joint venture in which any of the members does not qualify for the bidder's preference. He further stated that, in his opinion, the arguments which the Power Authority has used in an attempt to justify its position are without merit.

Meeting adjourned at 5:45 p.m.



Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 28, 1983

The Honorable Jalmar M. Kerttula
President
Alaska State Senate
Juneau, Alaska 99811

Dear Senator Kerttula:

The Special Committee on the Anchorage-Fairbanks Intertie has recently reviewed the decision of the APA to award the bid on the Anchorage-Fairbanks Intertie contract. In making the award, the Authority granted an Alaska bidder's preference to a joint venture, one of whose members has not been doing business in the state for six months. AS 37.05.230(5), however, requires that a bidder who claims the five percent preference has been in business in Alaska for six months preceding the date of the bid. It is the theory of the Power Authority that a bidder's preference may be awarded to a joint venture even if one individual member of the venture would not qualify for the preference so long as another member of the joint venture is entitled to receive the preference.

It is our belief that this interpretation is contrary to the clearly expressed intent of the legislature in AS 37.05.230(5) and would reduce the bidder's preference to a meaningless benefit. The purpose of our hearings was to determine whether it was necessary to introduce amendments to the law to clarify legislative intent. Prior to doing so, we retained the firm of Gross & Burke to review the status of the controversy and to advise us whether the interpretation placed in the law by the Power Authority was correct. If the interpretation of the Authority was valid, we asked the firm to assist us in drafting legislation to make it crystal clear that an unqualified party could not obtain an Alaska bidder's preference simply through the means of linking itself with a party that was qualified.

The firm has furnished us with the attached opinion. They are convinced, as is the Committee, that the language and intent of the law is clear and that it requires no amendments at this time. We believe the court presently reviewing this case will hold that the APA violated the terms of AS

38.05.230(5) when it awarded an Alaska bidder preference to a joint venture, one of whose members was clearly unqualified to receive it.

If for any reason the court concludes that nonqualified bidders can achieve a bidder's preference simply by forming a joint venture with a qualified Alaska corporation, the Committee will immediately submit amendments to the law to make it even clearer that such a practice is not in accord with the intent of the Legislature. It appears at the present time, however, pending a court decision, that no such amendments are necessary and that the statute sufficiently expresses legislative intent.

Sincerely,

Dick Eliason, Chairman
Senate Labor and Commerce
Committee

Vic Fischer, Chairman
Senate State Affairs Committee

Bettye Fahrenkamp, Chairman
Senate Resources Committee

Attachment

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801


AVRUM M. GROSS
SUSAN A. BURKE

(907) 566-2777

March 28, 1983

MEMORANDUM

TO: Richard I. Eliason
Chairman, Special Committee on the Anchorage-Fairbanks
Intertie Contract

FROM: Avrum M. Gross
Susan A. Burke 

RE: AS 37.05.230(5) - Alaska Bidders Preference

One March 3, 1983, the Alaska Power Authority issued a notice of intent to award the bid on the Anchorage/Fairbanks Intertie to a joint venture composed of Irby Construction Company and Northface Construction, Inc. One of the joint venturers (Northface) had maintained a place of business in the state for more than six months prior to the bid. Irby Construction Company had not maintained a place of business here for six months prior to the bid. The joint venture was apparently created for the purpose of submitting the bid and as a joint venture it has not done any prior business in Alaska. APA awarded the joint venture an Alaska bid preference of five percent under the theory that since one of the joint venturers (Northface) qualified, the joint venture of which Northface was a member also qualified.

The Special Committee has expressed concern that through granting a bidder's preference to a joint venture, one of whose members is clearly unqualified to receive the preference, the APA has violated the terms of AS 37.05.230(5). You have asked our opinion on the validity of APA's grant of the bidder's preference and our advice as to whether the bidder's preference statute requires amendment to insure that only qualified Alaskan companies, in whatever legal form they choose to bid, receive the preference.

It is our opinion that the grant of an Alaska bid preference by the Power Authority to Irby-Northface was contrary to the terms of the bidder's preference statute; that only qualified Alaskan bidders are entitled to the preference; and that if bidders choose to submit a bid as a joint venture, all members of the joint venture must qualify for the preference in order for the joint venture to receive the preference. We believe the terms of the statute are clear, and no amendment of those terms is presently required.

In reaching this conclusion, we have reviewed all of the briefs in the litigation presently pending before Judge Johnstone in Anchorage and have independently researched the legislative history of relevant statutes. We will not in this opinion, however, cite extensive legal authority. Suffice it to say that what we say here has been adequately researched and can be supported if necessary.

I. The Wording of AS 37.05.230(5) - The Bidders Preference

Statute

AS 37.05.230(5) defines an Alaska bidder as

a person who

- (A) holds a current Alaska business license,
- (B) submits a bid for goods or services under the name as appearing on his current Alaska business license,
- (C) has maintained a place of business within the state for a period of six months immediately preceding the date of his bid...

The words of the statute are clear. They require that a bidder hold an Alaska business license, that the bid be submitted in the name on that license, and finally, that the bidder have maintained a place of business within the state for a period of six months. In the case of an individual bidder, there is no problem whatsoever in determining whether the requirements have been met. In the case of a joint venture, the situation is slightly more complex but still, we believe, obvious. There can be three possible alternatives. The first is that a joint venture itself has been in business for six months prior to the submission of a bid. Such a joint venture would clearly qualify as would all of its component parts since through the mechanism of the joint venture, all parties to it would have been doing business in the state for more than six months. The second alternative is a

joint venture formed less than six months before a bid but made up of parties who were all doing business in the state for more than six months prior to the bid. As the APA mentions in its brief to the court, many joint ventures are formed solely for the purpose of bidding on specific jobs, so the situation presented in this second alternative is not unusual. We believe this type of joint venture would also qualify for the preference. If both firms to a joint venture meet all the requirements of the statute, the fact that they combine into a particular legal organization for the purpose of one job should not in any way affect their status. The whole, in short, is the sum of its parts; and if two firms which would qualify for a bidder's preference set up a legal entity in which they are the only members, that entity should also receive the preference.

The third situation is that found in the Anchorage-Fairbanks Intertie case. The joint venture that was awarded the bid has been in existence for less than six months. One party to the joint venture qualifies for the preference -- the other party does not. In essence, we have a situation where one party seeks to obtain a bidder preference to which it would otherwise not be entitled solely by selecting a particular form of business organization with which to submit its bid.

If the purpose of the bidders preference statute was to encourage the creation of joint ventures, the action of APA in granting a bidder's preference to this particular joint venture might make some sense. But the intent behind the statute has nothing to do with encouraging one particular legal structure as opposed to another. The obvious intent underlying the statute is to insure that Alaska businesses, which have furnished employment to Alaskans but whose costs of doing business here are much higher than elsewhere in the nation, will be able to compete fairly with outside firms who can frequently offer lower bids than Alaska firms. That purpose is only served by granting the preference to Alaska businesses which have been in past operation. As previously noted, the whole is comprised of its parts, and since a part of the joint venture at issue here cannot qualify for the preference, the joint venture itself cannot qualify.

The only conceivable ambiguity in AS 37.05.230(5) is over the question of whether joint ventures, which themselves have not been in existence for six months but both of whose members have been doing business in Alaska for at least six months, qualify for a bidder preference. The ambiguity stems from the fact that a literal reading of AS 37.05.230(5) suggests that if a joint venture has not been in operation for six months, it could not receive a preference no matter how long the members of the venture had done business in the state. As previously noted, we believe that such a literal reading would be contrary to the purpose of the act and that

a joint venture, whose individual members would qualify would itself qualify for the preference. But no matter how that question is resolved, we believe there is no ambiguity as to the question of whether nonqualified bidders can gain the benefits of the statute simply by linking themselves in legal organization with a bidder who could so qualify. A contrary interpretation would render the bidder's preference a sham. Large outside corporations could link up with tiny Alaskan firms who by themselves could not even consider bidding on such jobs as the Intertie solely for the purpose of gaining a bidder's preference. The result would be that qualified Alaskan firms which had previously rendered employment opportunities to Alaskans and been subject to the higher costs of doing business in Alaska would not receive the benefits of a statute specifically aimed at affording them those benefits. That was clearly not the legislature's intent when they passed the act, and we are sure it is not the intent today.

II. The Interpretation of the APA

The Power Authority has attempted to justify its interpretation of the act on two primary grounds. First, APA argues that since under AS 08.18.011 (registration of contractors) a joint venture is considered to be registered if only one party to the joint venture is registered, the same theory would allow APA to extend a bidders preference to a joint venture in which only one party is entitled to the preference. Second, APA argues that whatever the statutes may appear to mean, an administrative agency is

permitted to make reasonable interpretations of the law, and its past interpretations have extended the bidders preference to joint ventures which included only one party which by itself would qualify. APA then argues that the past practice of administrative agencies are given great weight by the courts in interpreting the terms of a statute and should be given similar weight here.

Neither of these arguments has any real merit. The contractors registration statute, for instance, has no logical or legal relation to the bidders preference statute -- they are entirely different statutory provisions with entirely different purposes, and the interpretation of one has no bearing on the interpretation of the other. AS 08.18.011 requires the registration of contractors for the purpose of insuring fiscal responsibility. It is no surprise, therefore, that only one member of a joint venture need be registered for the joint venture itself to be registered. All members of a joint venture bear responsibility for the debts of the venture, and if one registered party can insure the financial security of those with whom the venture deals, it is not important whether other members of the venture would also be able to post the necessary proof of financial ability. The bidders preference statute, however, is a special benefit awarded because of past activities within the state, and it makes a great deal of difference whether all parties in the venture are entitled to that benefit. If one party could

simply qualify, by joint venturing with a qualified bidder, the otherwise unqualified party would receive a legislatively conferred benefit that they have not earned and to which they are not entitled.

There is another basic flaw in APA's attempting to link the contractors' registration statute with the bidders preference statute. The Alaska bidders preference law covers all bidders for state contractor purchases. If the Authority is correct in applying the interpretation of AS 08.18.011 to the bid preference statute, then an out of state contractor who has never done business in Alaska can obtain the preference simply through linking itself with a qualified Alaska bidder. But what of bidders who are not contractors and are not required to register under AS 08.18.011? Suppose for instance the state seeks a bid for providing office equipment for all state buildings, and an outside office supply firm seeks to form a joint venture with an Alaskan office supply firm which by itself would qualify for a bidder's preference. Since office supply firms are not required to post financial security, there is no comparable provision to AS 08.18.011 for office supply firms, and, therefore, no justification for arguing by analogy that a joint venture made up of qualifying and nonqualifying firms qualifies for a preference. This would mean (at least according to the Power Authority's theory) that outside contractors can achieve an Alaska bidders preference through

means denied to every other outside firm that seeks to bid on state contracts. That makes no sense and it makes no sense because the contractors registration statute has nothing to do with the Alaska bidders preference act. The purposes of the two acts are different, and arguments made by analogy from one to the other inevitably lead to illogical conclusions.

The second argument of APA based on its past interpretations of the bidder's preference statute is also without merit. It is true that a settled administrative interpretation of the terms of an act made by an agency particularly entrusted with its enforcement is given weight by the courts in interpreting the act. That rule has no application if the statute is clear on its face and the agency's interpretation is clearly erroneous as it is in this case. But even if the statute were ambiguous, this is not a situation where agency interpretation would be given any weight at all. The "settled interpretation" of the agency appears to consist of two decisions made roughly six years ago under unknown circumstances by one official in the Department of Administration. There has been no attempt to establish that interpretation as a settled agency interpretation by reducing it to written form or adopting it as a regulation. What we have here is one state employee stating that he interpreted the act this way six years ago as justification for a present judicial interpretation of the act. When one reviews the cases in which

agency interpretations have been given some weight by the court, it becomes clear that this is not remotely like the situation envisioned by those cases.

One further point bears some mention in this analysis because it is raised in the arguments of all the parties to the Intertie litigation. On September 25, 1981 the Superior Court in Anchorage in an unrelated case, concluded that the Power Authority did not violate the law when it awarded a contract to a joint venture, one of whose members apparently did not qualify for the preference at the time the bid was submitted (Pacific Ventures and Dillingham Corporation v. APA et al. and Southeast-Harrison Western, case #3AM-81-6291). The case, however, is entitled to very little weight for two reasons. First, no real analysis of the issue involved here was made by the court. Second, the case is completely confusing on just why the court reached its conclusion. The court held that one of the parties qualified for the preference prior to the submission of the bid and that at the time of the actual award of the contract, the joint venture qualified through having been in existence for more than six months. It is not clear what the court would have done if the joint venture had been in existence for less than six months at the time of the award, nor is it clear why this point was given any significance whatsoever,

since AS 37.05.230(5) requires that a party seeking a preference have been doing business for six months prior to the date of the bid. We do not believe under these circumstances that the decision will be given any real weight by a court resolving the present controversy.

It is, therefore, our view that the statute is clear on its face and that no legislative action at this time is required to clarify its meaning. We are confident that the courts will hold that a joint venture, one of whose members do not qualify for the preference, is not in itself a bidder entitled to the preference.

AMG:yw

MINING

LEASE

REGULATIONS

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI



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

Senate

Committee on Resources

MINUTES

May 16, 1984
3:12 pm

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chairman
Senator Ziegler, Vice-chairman
Senator Paul Fischer
Senator Mulcahy
Senator Sturgulewski

CALENDAR

Hearing on proposed mining regulations.
TELECONFERENCED TO ANCHORAGE AND FAIRBANKS.

Esther Wunnicke, Commissioner, Department of Natural Resources, explained that these draft amendments to the Department's mining regulations would affect only those miners in areas of the state that require leasehold location. According to statute, those miners must obtain a mining lease by December 31, 1985.

Pedro Denton, Director, Division of Mining, Department of Natural Resources, explained that only 20% of state land is limited to leasehold location. There are about 25 mining operations on those land. Concerns voiced at recent public hearings in Fairbanks, Anchorage and Juneau focused on leasing mineral lands, the requirement that a best interest finding be made before a lease is issued, and the proposed 10-year term of the lease.

Henry Warner, President, Placer Miners of Alaska, Fairbanks, testified against the proposed regulations, urging the Department to issue leases to those miners affected before promulgating regulations on those leases.

Helen Warner, Fairbanks, testified against the draft regulations, and spoke in support of funding for the Mineral Institute Research Laboratory which could provide a resource data base for use in land planning.

Jim Jinks, Executive Director, Alaska Miners Association, Anchorage, questioned whether conversion of a leasehold to a lease should be considered a disposal of land. He spoke against the requirement that a best interest finding be made, and against the 10-year lease term. He discussed how these proposed regulations could affect pending litigation relating to Section 6(i) of the Statehood Act.

Ernest Wolff, Fairbanks, spoke in opposition to the regulations, specifically that the 10-year term for a lease was too short. He also felt these regulations would affect the pending 6(i) litigation.

Rudy Vetter, Fairbanks, was concerned about a proposed 200 foot wide greenbelt for a trail that runs across his mining claim. He also spoke in opposition to the proposed regulations.

Don Stein, Alaska Miners Association, Fairbanks, testified in opposition to the proposed regulations, and spoke of their effect on the 6(i) lawsuit.

Roger Burgraff, Fairbanks, asked if there was an Attorney General's opinion on which lands should be designated leasehold only, and if a conversion to lease is considered a land disposal. He spoke against the proposed 10-year lease and the effects of the regulations on the 6(i) lawsuit, and urged continued funding of DGGS mapping.

Bob Maynard, Assistant Attorney General, reported that an opinion is forthcoming on those questions. He indicated that AS 38.05.035 (a)(14) clearly treats leases as disposals and makes no distinction between a mining lease and any other lease.

Paul Metz, Fairbanks, spoke in opposition to the proposed regulations.

Paul Barelka, Fairbanks, spoke in opposition to the proposed regulations.

Wyatt Wickens, Geology Student, UAF, Fairbanks, urged continued funding for MIRL and DGGS mapping.

Robert Ranck, Geology Student, UAF, urged continued funding for MIRL and DGGS mapping.

Walt Weger, Fairbanks, recommended that the leasehold system only apply only to those reconveyed lands specified in section 6(i) of the Statehood Act.

The meeting adjourned at 4:20 pm.

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

5-16-84_____ : DATE
FAIRBANKS, AK_____ : SITE/LOCATION
SEN RESOURCES/MINING REGS HEARING_____ : SPONSOR/SUBJECT

TESTIFIED/PARTICIPATED:

- 1. HENRY F. WARNER, PRES PLACER MINERS, BOX 80674, COLLEGE 99708---488-6058
- 2. WALT WEGER, TREAS PLACER MINERS, BOX 339, FAIRBANKS, 99701- - - NONE GIVEN
- 3. HELEN WARNER, BOX 80674, COLLEGE, AK, 99708 - - - - - 488-6058
- 4. ERNEST WOLFF, BOX 80989, COLLEGE, AK, 99708 - - - - - 452-7640
- 5. RUDY VETTER, BOX 342, FAIRBANKS, AK, 99707 - - - - - 456-7269
- 6. DONALD STEIN, AK MINERS ASSC., 605 DUNBAR, FKS, 99701 - - - - - 456-7642
- 7. ROGER BURGGRAF, SR 20086, FKS, 99701 - - - - - 479-2596
- 8. PAUL METZ, P.O. BOX 73666, FKS, 99707 - - - - - 479-2874
- 9. PAUL BARELKA, 1215 9TH, FKS, 99701 - - - - - 452-3152
- 10. WYATT WICKENS, BOX 80628, COLLEGE, AK, 99708- - - - - 474-7585
- 11. ROBERT RANCK, SR 20099-A, FKS, 99701 - - - - - 479-2826

OBSERVED:

- 1. JIM MADONNA, 504 COLLEGE RD, FBKS, 99701 - - - - - 452-7398
- 2. DICK REGER, BOX 81054, COLLEGE, AK, 99708- - - - - 479-3848
- 3. BRUCE STILLWELL, 551 3RD STREET, FKS, 99701- - - - - 456-1452
- 4. M. A. WILTSE, 719 DEPAUW DR., FKS, 99701 - - - - - 479-2148
- 5. LEAH MADONNA, 504 COLLEGE RD, FKS, 99701 - - - - - 452-7398
- 6. PHYLLIS HUNSUCKER, 1618 SCENIC LOOP, FKS - - - - - 479-6668
- 7. ROSALYN STOWELL, 308 HAINES AVE. FKS, 99701- - - - - 456-5832
- 8. RALPH MILLER, CRESCENT CITY CA - - - - - 707 464-5602
- 9. DICK SWAINBANK, BOX 81315, FKS, 99708 - - - - - 479-6093
- 10. ARNE BAKKE, BOX 83183, FKS, 99708- - - - - 474-7585
- 11. KERWIN TSCHETTER, P.O. BOX 81343, COLLEGE, 99708 - - - - - 479-8275
- 12. DAWN COSGROVE, SR 30725, FKS, 99701- - - - - 474-6009
- 13. DEL ACKELS, BX 2151, FKS, 99707 - - - - - 452-4971
- 14. BRUCE CAMPBELL, BOX 2245, FKS, 99708 - - - - - 452-8715
- 15. MIKE RIBOR, 2295 STEVENS AVE. - - - - - 455-6310
- 16. ROSE RYBACHEK, BOX 55698, NORTH POLE, - - - - - 488-6453

12___TESTIFY/ED
16___OBSERVE/ED
28___TOTAL

*****T/C STARTED: 3:00 P.M.
*****T/C ENDED: 4:15 P.M.

MAY 18 1984

1136 04-00040270 FRI 1 05/16/84 10:24:44 ORIG: LA19 IN= 0010 OUT= 0058
FROM: ANCHORAGE TO: TOM/FINAL STATS
TARGET: LJHV SUBJ: (S) RESOURCES, 5/16

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

DATE: MAY 16, 1984
SITE: ANCHORAGE
SPONSOR/SUBJECT: (S) RESOURCES, DEPT OF NATURAL RESOURCES, MINING REGS

...1..TESTIFIED
...5..OBSERVED
...6..TOTAL

*****T/C STARTED: 3:00 PM
*****T/C ENDED: 4:18 PM

TESTIFIED

1. JAMES R. FINKS/AK MINER'S ASSN., 509 W. 3RD AVE., SUITE 17, 276-0347

OBSERVED

1. D. CREEKMAN/SELF, 2331 STABOARD LN., 345-4558
 2. MARY K. HESSION/SELF, DNR, DIV. OF MINING, 265-4318
 3. LAUREL MURPHY/SELF, , 265-4184
 4. MARLE WORCESTER/DEPT. OF LAW, 276-3550
 5. DAVE HEDDERLY-SMITH, 7201 NORTH PARK DRIVE, 345-6527
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Alaska State Legislature

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

Senate

Committee on Resources

MEMORANDUM

TO: Senate Resources Committee Members

FROM: Senate Resources Committee Staff

RE: Committee Meeting, Wednesday, May 16th.
TELECONFERENCED TO FAIRBANKS AND ANCHORAGE.

DATE: May 14, 1984

On Wednesday, May 16th at 3:00 pm in the Beltz Room, the Senate Resources Committee will hear testimony on proposed mining regulations.

The Department of Natural Resources is going to public hearing this month on draft amendments to their mining regulations. Of particular interest are those regulations governing conversion of leaseholds to leases (11 AAC 86.306).

Current statute (AS 38.05.185 and .205) provides that on state lands of mineral character or where land use conflicts exist, mining claims must convert to mining leases prior to production. In 1981, the legislature extended the deadline for conversion of claims to leases until 12/31/83; the 1983 legislature extended the deadline to 12/31/85. Approximately 20% of all State-owned land is designated for leasehold. Thousands of leasehold locations have been staked in such areas; 29 contain operational mines, and will need a lease by 12/31/85 in order to continue production.

The Director of the Division of Mining will provide the Committee with an overview of the draft regulations, and public comments will be heard. The hearing will be teleconferenced to Fairbanks and Anchorage.

§ 38.05.183

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§ 38.05.185

PUBLIC LANDS

§ 38.05.205

Article 7. Mining Rights.

Section

- 185. Generally
- 205. Mining leasing
- 207. Production license

Section

- 250. Tide and submerged lands
- 275. Recognition of locations

Sec. 38.05.185. Generally. (a) The acquisition and continuance of rights in and to deposits on state lands of minerals which on January 3, 1959, were subject to location under the mining laws of the United States shall be governed by AS 38.05.185 -- 38.05.280. Nothing in AS 38.05.185 -- 38.05.280 affects the law pertaining to the acquisition of rights to mineral deposits owned by any other person or government. The director, with the approval of the commissioner, shall determine those lands from which mineral deposits may be mined only under lease, and, subject to the limitations of AS 38.05.300, those lands which shall be closed to mining. State land may not be closed to mining or mineral location unless the commissioner makes a finding that mining would be incompatible with significant surface uses on the state land. State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under AS 38.05.205 or the commissioner has determined that the land was mineral in character at the time of state selection. The determinations required under this subsection shall be made in compliance with land classification orders and land use plans developed under AS 38.05.300.

(b) The failure on the part of a mining lessee or a locator to comply strictly with AS 38.05.185 -- 38.05.280 and regulations adopted under it does not invalidate his rights if it appears to the satisfaction of the commissioner that the locator complied as nearly as possible under the circumstances of the case, and that no conflicting rights are asserted by any other person. Unless otherwise provided, the usages and interpretations applicable to the mining laws of the United States as supplemented by state law apply to AS 38.05.185 -- 38.05.280. (§ 1 art IX ch 169 SLA 1959; am § 19 ch 61 SLA 1960; am § 1 ch 123 SLA 1961; am § 1 ch 108 SLA 1981)

Effect of amendments. -- The 1981 amendment added the fourth through sixth sentences of subsection (a).

NOTES TO DECISIONS

Stated in June 10, 1982, Op. Att'y Gen.

Sec. 38.05.205. Mining leasing. (a) Prior discovery, location and filing shall initiate prior rights to mineral deposits subject to AS 38.05.185 -- 38.05.280 in or on state lands, other than submerged

lands, which are open to mining leasing. Locations shall be made and certificates of location recorded in accordance with AS 38.05.195. If the located lands are available only for leasing, the director shall publish in a paper of general circulation in the area of the location, notice of the filing of the location and notice that a mineral lease will be issued. The notice may be combined with notices of locations either in the same general area or statewide. Unless a conflicting location exists, no later than two weeks after publication of the notice, an application form for a mining lease shall be mailed to the locator by the director. A lease application shall be filed with the director by the locator within 90 days after receipt of the form. If the located lands are not available for leasing, notice shall be given the locator by the director and the locator's prior rights shall terminate. A mining lessee has the exclusive rights of possession and extraction of all minerals subject to AS 38.05.185 — 38.05.280 lying within the boundaries of his lease or location. Mining leases may be issued for one location or for a group of contiguous locations held in common. Minerals may not be mined and marketed or used until a lease is issued, except for limited amounts necessary for sampling or testing.

(b) Beginning on the date established by the commissioner under AS 38.05.210 there shall accrue an annual rental for each leasehold location or portion thereof whether or not under lease, not less than the value of annual labor improvements required for mining claims. The value of work done on, or for the benefit of, the leasehold in compliance with AS 38.05.210 may be credited against the rental.

(c) A mining lease shall be for any period up to 55 years, and the lessee has a right to a new lease at the end of each lease period. The commissioner may make reasonable adjustments of the rental rate at the end of each 20 year period, based upon changed conditions in production costs and markets. A valid mining claim located and held under AS 38.05.195 may be converted to a lease at any time upon application by the owner, and issuance by the director. No rights granted by a mining lease may be exercised until the lease has been filed for record in the recording district where the land is located. (§ 4 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 2 ch 108 SLA 1981)

Effect of amendments. — The 1981 amendment in subsection (a), added "the director shall publish in a paper of general circulation in the area of the location, notice of the filing of the location and notice that a mineral lease will be issued" at the end of the third sentence, added the present fourth sentence, added "unless a conflicting location exists, no later than two weeks after publication of the notice" at the beginning of the fifth sentence, deleted "upon request or upon receipt of

notice that the location has been made on lands open only for leasing" at the end of the fifth sentence, substituted "the locator's" for "his" preceding "prior rights" in the sixth sentence and added "or location" following "lease" in the seventh sentence.

Editor's notes. — Section 5, ch. 108, SLA 1961, as amended by § 1, ch. 90, SLA 1983, provides: "SPECIAL PROVISION FOR MINING LEASE LOCATIONS. Notwithstanding AS 38.05.205(a), until

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DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING

POUCH 7-016
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**NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE DEPARTMENT OF NATURAL RESOURCES**

Notice is given that the Department of Natural Resources, under authority vested by AS 38.05.020, proposes to adopt, amend, and repeal regulations in Title 11 of the Alaska Administrative Code, dealing with mining locations upland mining leases, offshore prospecting permits and leases, and production licenses, to implement and interpret AS 38.05.185-38.05.280, as follows:

1) 11 AAC 82.635 is proposed to be amended to require that surrenders of a portion of a lease or prospecting permit be by legal subdivision.

2) Article 1 of 11 AAC 86 is proposed to be amended to limit the time during which a location on state selected land can be rejected after tentative approval, and to preclude issuance of mining leases or production licenses on state-selected land (sec. 115); to require additional material in applications for certificate of substantial compliance (sec. 125); to delete obsolete land classification references, add the commissioner's finding that surface disposals create potential use conflicts (this restricts the land to mining leasing), give "grandfather rights" to locations discovered and posted but not yet recorded before a leasing requirement takes effect, and require public notice before a closing or leasing order is issued or changed (sec. 135). New secs. 145-155 are adopted to limit surface uses of a mining claim and set out "timberlands" criteria under AS 38.05.255, allow filing plan of operations instead of miscellaneous land use permit application, and define terms used in 11 AAC 86.

3) In article 2 of 11 AAC 86, amendments are proposed to clarify that discovery must precede posting (sec. 215); to make editorial changes in location notice and certificate requirements (secs. 210-215); to let a single map cover several contiguous locations, allow use of approved location certificates in lieu of the state form itself, and require recordation of amended location certificates if original did not comply with requirements (sec. 215); to make annual labor procedures applicable to work in lieu of rental on leasehold locations (sec. 220); and to require mining locations to be amended before being subdivided and sold (sec. 230).

4) In article 3 on upland leasing, amendments are proposed to set out additional circumstances under which the state cannot or will not proceed to convert a leasehold location to lease (sec. 300) and to explain the lease application process (sec. 305). New sections are proposed to set out how the state will process the lease application and allow multiple adjacent locations to be grouped into a single lease if reasonably compact (sec. 306); to state rental requirements for leasehold locations and leases (sec. 308); to deal with discovery requirements for the locations within a mining lease (sec. 309); and to set out the lease duration (sec. 312) and general stipulations (sec. 311) for upland mining leases.

5) In article 4 (prospecting sites), amendments are proposed to make staking requirements for a prospecting site the same as for a mining claim (sec. 405); to make housekeeping changes (sec. 410); to delete an invalid clause (sec. 425); and to set out requirements for getting a prospecting site extended (sec. 430).

6) In article 5 (offshore prospecting permits and leases), amendments are proposed to make sections of 11 AAC 82, dealing with chargeable acreage and surveying, applicable to offshore permits and leases (secs. 500 and 535); to clarify that filing an offshore prospecting permit application segregates the locatable minerals in the tract applied for (sec. 500); to set out the process and standards for converting prospecting permits to offshore leases, including the information required to be filed (sec. 530); to allow carry-forward of work credits in lieu of rental (sec. 540); and to specify that known offshore deposits will be offered competitively, while providing standards for the known deposits determination (sec. 545). New sections are proposed to set out general stipulations for prospecting permits and leases (sec. 508), prohibit permit extensions (sec. 530), fix the duration of an offshore lease (sec. 532), allow lease extensions under some circumstances if the lessee is close to attaining production (sec. 575), and allow lessees to apply for suspensions under certain circumstances (sec. 580).

8) In article 7, mining production licenses, amendments are proposed to require date of production in the application (sec. 700); to set out the circumstances under which an application would be rejected (sec. 705, with a corresponding change in sec. 735); to provide for notice, if possible, to persons holding conflicting rights (sec. 710); and to make editorial changes (secs. 715 and 740).

9) A new article 8, general provisions for prospecting permits and both upland and offshore leases, is proposed. Sec. 800 sets out plan of operation requirements; sec. 805 allows the director to require a lease or permit bond; sec. 810 provides for suspension or termination for breach of permit or lease terms; and secs. 815 and 820 make the relinquishment and transfer sections of 11 AAC 82 applicable to prospecting permits and mining leases under 11 AAC 86.

10) 11 AAC 86.200, .310, .315-.325, .420, .550-.560, and .570 are repealed.

Notice is also given that any interested person may present oral or written statements or arguments relevant to the proposed action at a hearing to be held at the Multipurpose Room, Ryan Jr. High School (951 Airport Way), Fairbanks, Alaska, at 7:00 p.m. on May 10, 1984; or the Middle Level, Pioneer Schoolhouse (3rd and Eagle), Anchorage, Alaska, at 7 p.m. on May 14, 1984. In addition, written statements or arguments may be sent to the Department of Natural Resources, Division of Mining, Pouch 7-016, Anchorage, Alaska 99510, and must be received no later than May 31, 1984.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to the Department of Natural Resources, Division of Mining, Pouch 7-016, Anchorage, Alaska 99510, or may be picked up at the division's Mining Information Offices (794 University Ave., Fairbanks; 3601 C St., Suite 1008, Anchorage; 230 So. Franklin, Juneau; or 2nd Floor, State Office Building, Ketchikan).

The Department of Natural Resources, upon its own motion or at the instance of any interested person, may after the close of the comment period adopt proposals within the scope of this notice without further notice or may decide to take no action on them.

DATE: 4/18/84

for Samuel G. Murray
Pedro Denton, Director, Division of Mining

TWENTY QUESTIONS ABOUT MINING LEASING ON STATE-OWNED LANDS

1) WHY IS THE STATE SETTING UP A LEASING SYSTEM? IS THIS PART OF THE "6(i)" LAWSUIT? The mining leasing system has no connection to the lawsuit recently filed under sec. 6(i) of the Statehood Act. Since 1961 there has been a state law allowing lands to be designated for leasing only, rather than for staking mining claims. Over the last 23 years about a fifth of all state-owned lands have been put into a leasing category. Thousands of leasehold locations have been staked in such areas, but these leasehold locations have not been converted into mining leases because the leasing system was not yet ready. Now, however, the legislature has set a deadline of Dec. 31, 1985. After that date, miners will not be able to produce on lease-only lands unless they have a lease. This is why the state Department of Natural Resources (DNR) is amending its regulations and preparing to issue leases to miners who need them in order to produce or continue production.

2) IS THIS A COMPETITIVE LEASING SYSTEM? No. The miner begins the leasing process by staking a "leasehold location," which gives the miner exclusive rights to convert the location into a noncompetitive lease. There is no lease sale, open bidding, or royalties.

3) WHAT'S A LEASEHOLD LOCATION? A leasehold location is a location made on lease-only lands and not yet converted to lease. Discovery, location, and filing requirements are the same for leasehold locations as for mining claims, but the rights acquired are different. A mining claimant has "exclusive rights of possession and extraction of all [locatable] minerals lying within the boundaries of his claim" (AS 38.05.195), whereas a leasehold locator has "prior rights" to the deposits but does not get possession and extraction rights until the lease is issued (AS 38.05.205).

4) WHO HAS TO GET A MINING LEASE? If you have a leasehold location on state land, you may not produce minerals for commercial purposes after December 31, 1985 without a lease. (If you have a mining claim, you are not required to get a lease prior to production, but you may request a lease if you wish.) There are about 25 mines in production now that will require a lease to operate after December 31, 1985. These operations are located in the Talkeetna, Circle, Fairbanks, and Skagway areas. The Division of Mining will attempt to notify each of these operators that a lease will be necessary; however, it is the responsibility of the miner to get a lease if one is required.

5) WHAT DO I HAVE TO DO TO GET A LEASE?

a. Stake your location. You must first establish a location under state mining laws and regulations (through discovery, location, and filing), and maintain that location in good standing by keeping it marked on the ground and by performing and filing annual labor.

b. Get a lease application. Contact the Division of Mining and ask for a lease application. Remember that if you are a leasehold locator, you must have a lease before you can begin production. Because the leasing process could take several months, be sure to request your application well in advance of the mining field season. Before a lease application will be sent to you, the law requires the Division of Mining to publish a notice about your location filing and the expected issuance of your lease. Generally, a lease application will be sent to you within two weeks after the publication of the notice. However, if another locator says he has rights to the same land and the division decides it will not try to resolve the conflict, it will stop the leasing process. The two locators will be advised to settle the dispute before processing can be resumed.

c. Return your lease application. Once you have received your lease application, you have 90 days to complete and return it with the \$20 application fee. It is especially important that leasehold locators return the completed form within 90 days because the leasehold location will be considered abandoned if they don't. The next part is up to the state (see below). Once the lease is issued, you must record it before it takes effect.

6) WHAT DOES THE STATE DO WITH MY LEASE APPLICATION? After receiving the completed lease application, the Division of Mining will prepare a written "state's best interest finding" about the lease and the terms and conditions to be included. It will give notice of that finding by newspaper advertisements and by a letter to the local municipality. If your leasehold location is within Alaska's coastal zone, the state must also determine whether lease issuance would be consistent with the Alaska Coastal Management Program.

7) IS THE STATE GOING TO DO A VALIDITY DETERMINATION BEFORE ISSUING A LEASE? The State has always had the right to conduct validity tests and may implement a procedure to do this in a few cases before issuing a lease. Generally, the state will issue a lease based on an affidavit filed by the applicant stating that proper discovery and filing has been completed. In areas of particularly high resource conflict where a mining lease is suspected of being used to facilitate illegal surface uses (vacation cabin, hunting lodge, etc.), the state may do a validity test.

8) WHY IS THE PROCESS SO COMPLICATED? The lease grants the right to produce the minerals found within the leased area. That's an important property right; transferring it to an individual qualifies as "a disposal of an interest in state lands." Under the Constitution and Alaskan natural resource laws, procedural safeguards such as public notice and written documentation of the decision are required before the State can convey its lands or resources to someone else.

9) COULD SOME MEMBER OF THE PUBLIC OBJECT TO THE LEASE AND KEEP IT FROM BEING ISSUED? By law, disposals of state-owned resources must take place in a manner open to public review. A member of the public, local government, or another agency could point out a serious problem or conflict that the division has overlooked. If so, the division would have to look for ways to minimize the problem through lease stipulations or other measures, or balance the conflict by the benefits that Alaska as a whole would gain from leasing. If the division was unable to do this, and could not conclude that it was in the state's best interest to issue the lease, the disposal could not take place.

10) ARE THE LEASES GOING TO CONTAIN SPECIAL STIPULATIONS? State land is designated for leasing only if it contains other valuable resources or if the surface has already been leased or sold for residential or commercial uses. This means that mining leases are likely to contain stipulations so that potential use conflicts between mining and the other resource uses can be worked out or reduced. The lease will also require a "plan of operations."

11) WHY IS DNR REQUIRING A PLAN OF OPERATIONS? The plan of operations will allow DNR to evaluate and approve a work plan for up to a 10-year period instead of the yearly Miscellaneous Land Use Permit that is currently required. This will relieve the miner of applying to DNR every year and allow DNR to look at the long-term effects and benefits of the operation.

12) IS THERE ANY LIMIT TO THE SIZE OF MY LEASE, OR THE NUMBER OF LEASES I CAN HAVE? COULD I SELL OR SUBLEASE ALL OR PART OF MY LEASE? There are no size or number limitations on mining leases. However, if a lease is made up of multiple locations, those locations must share common boundaries. With DNR approval, you can sell or sublease your lease. If you wish to transfer only a part of the lease, you must do so by legal subdivision. (In most boroughs you cannot subdivide into parcels less than 40 acres without filing a plat for borough review.)

13) HOW MANY YEARS WILL MY LEASE BE GOOD FOR? Your lease will be issued for 10 years, and you have a right to a new lease at the end of that time.

14) DOES MY LEASE REQUIRE ME TO PAY RENT OR A ROYALTY? You are not required to pay a royalty; however, you do have to pay rent, or do work instead of paying rent, every year. You pay less rent in the early years of your operation. Rent is \$10 per acre for the first five years, \$15 per acre for the next five years, and \$20 per acre after that. As with mining claims, you can carry excess work or rental forward to the next year or years.

15) THE RENTAL RATE FOR LEASEHOLD LOCATIONS WORKS OUT TO \$5 PER ACRE--SAME AS THE ANNUAL LABOR RATE FOR MINING CLAIMS. WHY IS THE RENTAL RATE FOR LEASES HIGHER? The rental rate is higher in order to discourage premature lease conversions, because of the expense of issuing leases. In most cases, a lease will never become necessary: Very few claims are rich enough to produce minerals.. There are almost 50,000 state mining claims, yet less than 200 mines are in production.

16) CAN I LOSE MY LEASE? Yes, but only if you fail to comply with the terms of your lease. For example, if you do not pay your rent (or file your affidavit of work instead of rent) on time, your lease is automatically terminated.

17) I CAN SEE SOME DISADVANTAGES TO HAVING A MINING LEASE. ARE THERE SOME ADVANTAGES? Once the State has issued you a lease, you have more secure land tenure because the State will not accept any top filings. The State recognizes you as the official owner of the locatable mineral rights within the leased area. Because your tenure is more secure, you may find it easier to borrow money for lease development. And through the leasing process, conflicts with other resource users or owners will also have been worked out.

18) IF I DON'T CONVERT MY LEASEHOLD LOCATION TO A LEASE, WHAT HAPPENS? You are free to hold your leasehold location from year to year without converting it to a lease--there is no time limit on how long you can keep it in that status. But after December 31, 1985, you cannot go into production until you have received a lease. On land designated only for leasing, production without a lease would be illegal. Failing to file a lease application under those circumstances would result in forfeiture of the leasehold location and the land would be available for someone else to stake.

19) WHAT'S THE LEGAL BASIS FOR LEASING?

Article VIII, sec. 11 of the State Constitution: "Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to these [locatable] minerals and also a prior right to permits, leases, and transferable licenses for their extraction."

AS 38.05.185(a): "The director, with the approval of the [DNR] commissioner, shall determine those lands from which mineral deposits may be mined only under lease....State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under AS 38.05.205...."

AS 38.05.205: "Prior discovery, location and filing shall initiate prior rights to [locatable] mineral deposits...in or on state lands, other than submerged lands, which are open to mining leasing....A lease application shall be filed with the director within 90 days after receipt of the [application] form....A mining lessee has the exclusive rights of possession and extraction of all [locatable] minerals...lying within the boundaries of his lease....Minerals may not be mined and marketed or used until a lease is issued, except for limited amounts necessary for sampling or testing."

20) ARE THESE MINING LEASE REGULATIONS FINAL? There have been mining lease regulations in effect for many years, but DNR is proposing to make several important changes in those regulations. These changes (in particular, see Articles 3 and 8) are attached for your review and comment. Public hearings on the proposed amendments will be held in May, as detailed in the hearing notice (also attached). You may also comment in writing until May 31. The hearing testimony and written responses will be used to help the department decide on the final wording of the regulations. That decision will probably be made late in the summer or early fall. The amendments will then require the approval of the Alaska Department of Law before they can be officially filed and go into effect.

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TITLE 11. NATURAL RESOURCES.

Chapter

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82. Mineral Leasing Procedure (11 AAC 82.100 -- 11 AAC 82.815)

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86. Mining Rights (11 AAC 86.100 -- 11 AAC 86.835 [750])

CHAPTER 82. MINERAL LEASING PROCEDURE.

11 AAC 82.635(a) is amended to read:

11 AAC 82.635. SURRENDERS. (a) All of the land in a lease or permit may be surrendered by the lessee or permittee of record by filing a written surrender at the [A] appropriate [FILING] office of the department. A surrender of any legal subdivision of the lease or permit land [A PORTION OF THE LAND], or of a separate and distinct zone or geological horizon in all or a portion of the land, is not effective unless approved by the commissioner.

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(Eff. 9/5/74, Register 51; am 7/22/79, Register 71; am / / , Register)

Authority: AS 38.05.020
AS 38.05.145(a)

CHAPTER 86. MINING RIGHTS.

Article

- 1. General Provisions (11 AAC 86.100 -- 11 AAC 86.155) [140]
- 2. Staking, Recording and Maintaining Claims and Leasehold Locations (11 AAC 86.200 -- 11 AAC 86.230)
- 3. Upland Mining Leases (11 AAC 86.300 -- 11 AAC 86.312 [.325])
- 4. Prospecting Sites (11 AAC 86.400 -- 11 AAC 86.435)
- 5. Offshore Prospecting Permits and Leases (11 AAC 86.500 -- 11 AAC 86.580) [.570]

- 7. Mining Production Licenses (11 AAC 86.700 -- 11 AAC 86.750)
- 8. General Prospecting Permit and Lease Provisions (11 AAC 86.800 -- 11 AAC 86.820)

ARTICLE 1. GENERAL PROVISIONS.

Section

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115. Locations prior to tentative approval

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125. Failure to comply
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