ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4903 HRES MINING ISSUES 6(i)... - RAILBELT ENERGY

Plaintiffs appealed this decision to the Alaska Supreme Court, which found that the leasing requirement set forth in the third sentence of section 6(i) required the State to lease all of its "mineral lands." More importantly, it held that the lease must include provisions requiring the miner to pay the State rent and royalties for the production of minerals from State "mineral lands." Appendix A at A-19-A-26. In reaching this decision, the Alaska Supreme Court agreed with the plaintiffs that the primary purpose of the section 6(i) leasing requirement was to ensure an adequate revenue base for the State of Alaska. Id. This holding is the primary subject of the petitions for certiorari filed by the State and the

ATTACHMENT

Alaska Miners Association.[2]

The Court also held, however, that the phrase "mineral lands" was limited to those lands known to be mineral in character at the time they were selected by the State, thus substantially limiting the import of section 6(i)'s leasing requirement as a revenue-generating measure.

No final judgment has been issued in this case. Rather, the Alaska Supreme Court remanded the case to the Alaska Superior Court to fashion appropriate relief based on the opinion of the Alaska

[2] The Alaska Supreme Court also found that, as a matter of state law, plaintiffs had standing to bring this challenge, and that the proviso in section 6(i) did not create an exclusive cause of action to challenge the state's implementation of section 6(i). Id. at A-4 - A-12. These issues were also raised in the Petitions for Certiorari filed by the State and the Alaska Miners Association.

ATTACHMENT

Supreme Cou

The
definition
inconsisten
legislative
in fact,
rationale u
ruling on
requirement
Court be
interpretat
section 6(
for a wri
would make

[3] The
Certiorari
federal law
for all
Broadcastin
U.S. 469,
Petitions
obviously t
Court revi
final Alask
scope of se

Supreme Court.[3]

ARGUMENT

The Alaska Supreme Court's definition of "mineral lands" is wholly inconsistent with the language and legislative history of section 6(i), and in fact, with the revenue-generation rationale upon which the Court based its ruling on the meaning of the leasing requirement itself. Moreover, if this Court believes that the proper interpretation and implementation of section 6(i) is sufficiently important for a writ of certiorari to issue, it would make little sense for the Court not

---

[3] The State bases its Petition for Certiorari on the principle that all federal law issues in the case are final for all practical purposes. Cox Broadcasting Corporation v. Cohn, 420 U.S. 469, 479-85 (1975). If the Petitions for Certiorari are granted, obviously there should be no bar to this Court reviewing the related and equally final Alaska Supreme Court ruling on the scope of section 6(i).

ATTACHMENT

to review as well the related issue of the scope of the section 6(i) requirement.

On its face, section 6(i) is not limited by reference to the State's knowledge of mineral character at the time of selection. Rather, the first sentence of section 6(i) states that "All grants made or confirmed under this Act shall include mineral deposits" (emphasis added). The second sentence requires that all "sales, grants, deeds, or patents for any of the mineral lands so granted" be subject to reservation to the State of those minerals (emphasis added); and the third sentence requires mineral deposits from "such lands" to be subject to lease. Since the first sentence indicates that all grants include mineral deposits automatically, the provision does not appear to be

limited by kno
at the time of

This logi
language of
consistent wi
provision. A
properly found
of section 6(
provide the ne
source of re
Appendix A at
Congress were
State lacked
revenue and
consequently h
federal treasu
lands and the
those lands h
major means
obtain needed

Obviously

ATTACHMENT

limited by knowledge of mineral character at the time of selection.

This logical reading of the plain language of section 6(i) is fully consistent with the purposes of the provision. As the Alaska Supreme Court properly found, the leasing requirement of section 6(i) was imposed in order to provide the new State of Alaska with a source of revenue for its operations. Appendix A at A-19 - A-25. Many in Congress were quite concerned that the State lacked a sufficient source of revenue and that the state would consequently be a continuing drain on the federal treasury. The grant of mineral lands and the attendant requirement that those lands be leased was meant to be a major means by which the State could obtain needed revenue.

Obviously, the more lands that are

covered by the leasing requirement, the more revenue that the State may potentially receive. In fact, if the purpose of section 6(i) was to ensure adequate revenue for the state, as found by the Supreme Court, a narrow interpretation of the scope of the provision makes little sense.

This reasoning takes on added importance in the context of this case. As noted above, section 6(i) was meant to be a principal source of revenue for the State. Alaska in fact received considerably more lands, and hence more lands containing minerals, than any other state received upon admission to the United States. Id. at A-21, A-23. And the mineral lands have indeed been a significant source of wealth, for much of Alaska's revenue comes from oil. State's Petition for Writ of Certiorari, at 7.

Yet the
beginning
look to al
Hardrock
source, wh
required
rent and
first plac
currently c
those min
Alaska Supr
royalties
portion of
narrow def
Court ha
diminished
be generated
adopts a
definition
Court, the
revenue at a

Yet the Alaska's oil reserves are beginning to decline, and the State must look to alternative sources of revenue. Hardrock minerals may well be such a source, which presumably is why Congress required them to be leased, along with rent and royalty requirements, in the first place. Yet the State does not currently charge rent and royalties for those minerals, and even under the Alaska Supreme Court's opinion, rent and royalties will be charged on only a portion of State lands. By adopting its narrow definition of mineral lands, the Court has therefore substantially diminished the amount of revenue that may be generated. In fact, if the State adopts a narrow interpretation of the definition employed by the Alaska Supreme Court, the State will receive little revenue at all.

The fact that Congress intended the leasing requirement of section 6(i) to apply to all mineral lands is confirmed by the legislative history of the Statehood Act. Section 6(i) was modeled after the School Lands Act, 43 U.S.C. 870(b), which contains a leasing requirement essentially identical to that found in section 6(i). See Appendix A at A-14 - A-15. However, the School Lands Act grant of "mineral lands" included only those lands known to be mineral in character at the time they were granted to a particular state. United States v. Sweet, 245 U.S. 563 (1918). Before the School Lands Act, "mineral lands" were excluded from grants to states for use for public schools, id., which led to a great deal of confusion and litigation over what was known about the mineral character of school lands at the time they were

Act.[4]

While

Act allow

"mineral l

problems

applied on

Letter from

Senator Nye

Cong., 2d S

accordingly

mineral ch

when title

issuance

resolve all

---

[4] The and costly l were know time of tr Secretary Honorable Ro the Senate Surveys, Jan Rep. 603, (1926).

they were granted under the School Lands Act.[4]

While passage of the School Lands Act allowed states to take title to "mineral lands," it did not solve the problems of litigation, for the Act applied only to lands granted after 1927. Letter from Secretary of the Interior to Senator Nye, quoted in S. Rep. 1104, 72nd Cong., 2d Sess., at 2-3 (1933). Congress accordingly enacted a final fix whereby mineral character would be determined when title passed to the state, with an issuance of patent to conclusively resolve all problems of title. Act of

---

[4] The result was "much vexatious and costly litigation" over whether lands were known to contain minerals at the time of transfer. Letter from the Secretary of the Interior to the Honorable Robert Stanfield, Chairman of the Senate Committee on Public Lands and Surveys, January 5, 1926, quoted in S. Rep. 603, 69th Cong., 1st Sess., at 12 (1926).

ATTACHMENT _____

June 21, 1934, 48 Stat. 1185, codified as 43 U.S.C. 871(a) (repealed).

Congress initially considered adopting a substantially similar approach for Alaska's mineral lands, proposing in a section 6(k) to define the time at which mineral character would be determined.[5] However, it quickly decided to reject this definition because to do so would hold up the State's receipt of its lands. Hearings Before the House Committee on Interior and Insular Affairs on Hawaii-Alaska Statehood, 84th Cong., 1st Sess., at 332 (Feb. 15, 1955).

During the discussion of this

provision, D
was asked
"surplusage";
but asked tha
In light of t
mirrored the
Delegate Bart
changed the
"mineral lands
suggests that
definition, C
return to t
simply to def
lands containi

Congress
second option.
sentence of s
that all grant
include mineral
solved the min
by including

[5] The rejected provision stated: "For the purposes of this subsection, the mineral character of the lands granted to the State of Alaska shall be determined at the time patent issues, and the patent shall be conclusive evidence thereof." See Hearings Before the Senate Committee on Interior and Insular Affairs, Jan. 20-22, 25, 27-29, Feb. 1-4, 24, 1954, at 332.

provision, Delegate Bartlett of Alaska was asked if he felt that it was "surplusage"; he replied that it was not, but asked that it be deleted anyway. Id. In light of the fact that the provision mirrored the School Lands Act procedure, Delegate Bartlett must have felt that it changed the traditional definition of "mineral lands" in some manner. This suggests that by deleting the proposed definition, Congress meant either to return to the traditional system or simply to define "mineral lands" as all lands containing minerals.

Congress clearly meant to choose the second option. Most obviously, the first sentence of section 6(i) flatly states that all grants under the Statehood Act include mineral deposits. Thus, Congress solved the mineral determination dilemma by including mineral deposits in all

ATTACHMENT

state land grants. Second, Congress was well aware of the morass created by the traditional system, Sen. Rep. 1028, 83rd Cong., 2nd Sess., 32 (1954), and in light of the fact that it deleted proposed section 6(k) to enable the State to obtain its lands quickly, it could hardly have intended to set up a mineral character determination system, which could only lead to substantial delays in clearing up clouds on title, due to litigation over whether particular lands were known to be mineral in character at the time of selection by the State.[6]

For these
intended that
contained in s
mineral lands
6(a) and 6(b)
Alaska Supreme
Congressional
a definition o
well eviscerat
intent of the
decision is i
6(i)'s leasing

The Alaska
the scope of se
Statehood Act
plain language
purposes and
provision, and
the Court's o
leasing require

---

[6] Curiously, the Alaska Supreme Court fully acknowledges that their interpretation will result in "administrative problems," and legal disputes as to what point in time constitutes the "time of selection," and "how much must be known about the mineral character of selected lands to qualify them as mineral lands." Appendix A at A-31 & n.33. This is precisely the type of uncertainty that Congress sought to avoid.

For these reasons, Congress clearly intended that the leasing requirement contained in section 6(i) to apply to all mineral lands selected under sections 6(a) and 6(b) of the Act. Because the Alaska Supreme Court ignored this clear Congressional intent and instead adopted a definition of "mineral lands" which may well eviscerate the revenue-generation intent of the leasing requirement, its decision is inconsistent with section 6(i)'s leasing mandate.

CONCLUSION

The Alaska Supreme Court's ruling on the scope of section 6(i) of the Alaska Statehood Act is inconsistent with the plain language of that provision, the purposes and legislative history of the provision, and the rationale underlying the Court's own interpretation of the leasing requirement in the same section

ATTACHMENT

as requiring the payment of rents and royalties to the state. Therefore, Trustees for Alaska et al. respectfully request that this Cross-Petition on the issue of the scope of section 6(i)'s leasing requirement be granted.

DATED: August __, 1987.

By: _____
Ronald M. Zobel
(Counsel of Record
Eric Smith
Robert W. Adler
Trustees for Alaska

ATTACHMENT _____

Summary of Alaska Supreme Court
6(i) Decision

6(I) provides "mineral deposits in [mineral] lands shall be subject to lease. . ." Trustees argued that meant a cash rental or royalty was required. The State argued no cash rental or royalty was required. The Court ruled in favor of Trustees.

Trustees argued that "mineral lands" meant all lands that contained minerals no matter when they were discovered. . The state argued that mineral lands meant only those lands which were known to be "mineral in character" at the time of state selection. The Court ruled in favor of the state.

Question remaining: What is " mineral in character?" Traditional test is " known or believed to be valuable for minerals." This leaves a wide range of possible applications.

48K claims @ 40 ac = approx 2 m ac.

100 placer mines = 20% of all mines

5-10% claims as mineral

Department of Natural Resources
Proposed Options for Responding to Alaska Supreme Court 6(i) Decision
May 5, 1987

DNR Goals: Consistency; fairness; avoiding further litigation which may jeopardize mining on state land; ensuring a fair and reasonable return for use of state lands and minerals.

Option A: Using a broad definition of "mineral in character," establish a mineral leasing system on those lands.

> Approximately equal amounts of state lands managed under each system, but most state mining claims would fall within the leasing system.
>
> Moderate geologic analysis required prior to implementation.

Advantages: Probably complies with Supreme Court Decision; moderate rental/royalty will produce income to state.

Disadvantages: Would result in two separate systems of mineral location, increasing complexity of administration for private and public sector; may be challenged in courts.

Option B: Using a narrow definition of "mineral in character," establish a mineral leasing system on those lands.

> Very few mineral deposits will meet this test; therefore, very little state land managed under this program.
>
> Detailed geologic analysis required prior to implementation.

Advantages: Impacts only a few mineral development projects.

Disadvantages: Likely to be challenged in court; few miners would carry the total rental/royalty burden for all state miners.

Option C: Convert the whole system to "leasing," while maintaining the important aspects of the location systems.

> A single system for all state lands would result; no geologic analysis needed.

Advantages: Will comply with Supreme Court Decision; will generate reasonable rental payment from all state mineral claims, regardless of designation; may reduce long-term "holding" of claims with little development activity.

Disadvantages: Major change in Alaska's mining law.

Option D: Ask U. S. Supreme Court to review decision. U. S. Supreme Court has discretion to review or not review the case.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

May 1, 1987

MAY 1 1987

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

On May 1, 1987, the Alaska Supreme Court handed down a decision in the case of Trustees for Alaska vs. State of Alaska, Alaska Miners Association, et al, Opinion No. 3175, ruling that rents or royalties are required on all leased state mineral lands.

The term "mineral lands" describes those which were known to be "mineral in character" at the "time of state selection." However, the court did not expressly rule on the meaning of the terms "mineral in character" or "time of state selection."

We anticipate that this ruling will have profound implications and that an expeditious legislative briefing is appropriate. Therefore, we invite all members of the Alaska State Legislature and their staffs to a briefing by the Departments of Law and Natural Resources on the content and effects of this decision. For your convenience, a copy is enclosed.

The briefing is scheduled for Tuesday, May 5 at 7:00 a.m. in the Governor's Conference Room.

Sincerely,

Judith M. Brady

Judith M. Brady
Commissioner

Enclosure

10-J9 LH

THE SUPREME COURT OF THE STATE OF ALASKA

TRUSTEES FOR ALASKA, NUNAM KITLUTSISTI, DINYEA CORPORATION, VILLAGE OF MINTO, ALASKA INDEPENDENT FISHERMEN'S MARKETING ASSOCIATION, ALASKA CENTER FOR THE ENVIRONMENT, SOUTHEAST ALASKA CONSERVATION COUNCIL, FRIENDS OF THE EARTH, Plaintiffs/Appellants, v. STATE OF ALASKA, ALASKA DEPARTMENT OF NATURAL RESOURCES, ESTHER WUNNICKE, Commissioner, Department of Natural Resources, Defendants/Appellees, ALASKA MINERS ASSOCIATION, FAIRBANKS NORTH STAR BOROUGH and JOSEPH E. VOGLER, Defendants-Intervenors/Appellees.	File No. S-1142 O P I N I O N [No. 3175 - May 1, 1987]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Douglas Serdahely, Judge.

Appearances: Eric Smith and Robert W. Adler, Anchorage, for the Appellants. Robert M. Maynard and Mark P. Worcester, Assistant Attorneys General, Anchorage, Harold M. Brown, Attorney General, Juneau, for Appellee State of Alaska, Alaska Department of Natural Resources, and Esther Wunnicke, Commissioner, Department of Natural Resources. James N. Reeves, Bogle & Gates, Anchorage, for Appellee Alaska Miners Association. Ronald A. Zumbrun, Robin L. Rivett, and James S. Burling, Pacific Legal Foundation,

Sacramento, California, and Michael B. Markham, Borough Attorney, Fairbanks, for Appellee Fairbanks North Star Borough. Thomas R. Wickwire, Fairbanks, for Appellee Joseph E. Vogler.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton, and Moore, Justices.

MATTHEWS, Justice.

Alaska was granted the right to select 103,350,000 acres of land from the United States under section 6(a) and (b) of the Alaska Statehood Act, Pub. L. No. 85-508, 72 Stat. 339 (1958) (set out in a note preceding 48 U.S.C. § 21 (1982)). Mineral deposits in selected lands were also conveyed, subject to certain restrictions. Section 6(i) of the Act provides:

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

This case presents issues concerning the meaning of the section 6(i) grant and restrictions, and of appellants' standing to bring an action in state court to construe the meaning of the Alaska Statehood Act.

I. PROCEEDINGS BELOW

The appellants are a coalition of environmental, Native, and fishing groups. They filed an action in superior court seeking a declaration that the state's mineral leasing system violates section 6(i) in that the state does not require payment of either rent or royalties in leases of lands subject to section 6(i), and that the state has incorrectly construed the section 6(i) restrictions to apply only to lands known to contain minerals at the time of state selection rather than to all selected lands which contain minerals.[1]

All parties moved for summary judgment. The trial court ruled that the appellants did not have standing, that section 6(i) is enforceable only by the Attorney General of the United States, and that the state's mineral management system does not violate section 6(i). The court did not rule on the question whether the section 6(i) restrictions apply to all state-selected lands containing minerals or merely to those known to contain minerals at the time of selection.

We conclude that appellants have standing to maintain this declaratory judgment action, that the state's mineral leasing system violates section 6(i) because it does not require

---

1. Appellants also contend that section 6(i) has become part of the Constitution of Alaska, and has created public trust duties. Thus, appellants argue, to the extent that section 6(i) has been violated, so has the Alaska Constitution and the public trust.

the payment of rent or royalties on mining leases, and that section 6(i) applies only to those lands known to have been mineral in character at the time of state selection.

II. STANDING TO MAINTAIN DECLARATORY JUDGMENT ACTION

A. Standing

"Standing questions are limited to whether the litigant is a 'proper party to request an adjudication of a particular issue . . . .'" Moore v. State, 553 P.2d 8, 24 n.25 (Alaska 1976) (quoting Flast v. Cohen, 392 U.S. 83, 100-01, 20 L. Ed. 2d 947, 961 (1968)). Standing in our state courts is not a constitutional doctrine; rather, it is a rule of judicial self-restraint based on the principle that courts should not resolve abstract questions or issue advisory opinions. Id. The basic requirement for standing in Alaska is adversity. Id.

The concept of standing has been interpreted broadly in Alaska. We have "departed from a restrictive interpretation of the standing requirement," Coghill v. Boucher, 511 P.2d 1297, 1303 (Alaska 1973), adopting instead an approach "favoring increased accessibility to judicial forums." Moore v. State, 553 P.2d at 23; see also State v. Lewis, 559 P.2d 630, 634 n.7 (Alaska) (and cases cited therein), cert. denied, 432 U.S. 901, 53 L. Ed. 2d 1073 (1977). Our cases have discussed two different kinds of standing. One is interest-injury standing; the other is citizen-taxpayer standing.

Under the interest-injury approach, a plaintiff must have an interest adversely affected by the conduct complained of. Such an interest may be economic, Moore, 553 P.2d at 24; Wagstaff v. Superior Court, Family Division, 535 P.2d 1220, 1225 (Alaska 1975), or it may be intangible, such as an aesthetic or environmental interest. Lewis, 559 P.2d at 635. The degree of injury to the interest need not be great; "'[t]he basic idea . . . is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation.'" Wagstaff, 535 P.2d at 1225 & n.7 (quoting Davis, Standing: Taxpayers and Others, 35 U. Chi. L. Rev. 601, 613 (1968)).

In the instant case, the appellants assert that they have standing as citizens or taxpayers, rather than because their interests are injured. In prior cases, we have often permitted taxpayers or citizens to challenge governmental action based on their status as taxpayers or citizens. In many such cases, standing has been assumed and not discussed.[2] We have, however,

---

2. E.g., Thomas v. Bailey, 595 P.2d 1 (Alaska 1979) (land grant initiative challenged by citizens and taxpayers); Abrams v. State, 534 P.2d 91 (Alaska 1975) (taxpayer and citizen suit challenging legislative formation of Eagle River-Chugiak Borough); Boucher v. Engstrom, 528 P.2d 456 (Alaska 1974) (citizen suit to enjoin placement of capital move initiative on ballot); Boucher v. Bomhoff, 495 P.2d 77 (Alaska 1972) (citizen challenge to the wording of a referendum question); Jefferson v. Asplund, 458 P.2d 995 (Alaska 1969) (taxpayer suit challenging public professional service contract); Jefferson v. Greater Anchorage Area Borough, 451 P.2d 730 (Alaska 1969) (taxpayer suit

(Footnote Continued)

explicitly addressed taxpayer-citizen standing on other occasions. For example, in Coghill v. Boucher, 511 P.2d 1297 (Alaska 1973), registered voters (one of whom was also a poll watcher) were allowed to challenge certain proposed vote-counting procedures. In finding standing, we stated:

> In the case at bar, we conclude that a retreat to restrictive notions of standing, as urged by appellee, would not advance the public's vital interest in maintenance of the integrity of vote-tallying procedures during statewide elections. Denial of standing to appellants in the instant case would have the effect of unduly limiting the possibility of a popular check upon executive control of the election process. If registered voters and poll watchers are foreclosed from seeking judicial review of administrative regulation of this sensitive aspect of our governmental system, then it may well be that any review of executive activity in this area would be completely foreclosed, particularly in the event that candidates or political parties were unwilling to challenge such administrative actions. We decline to restrict the

---

(Footnote Continued)

challenging a bond issue); Suber v. Alaska State Bond Committee, 414 P.2d 546 (Alaska 1966) (taxpayer suit challenging public mortgage adjustment program); Walters v. Cease, 394 P.2d 670 (Alaska 1964) (citizen suit to enjoin referendum relating to formation of local government units); DeArmond v. Alaska State Development Corporation, 376 P.2d 717 (Alaska 1962) (taxpayer suit challenging the legality of public corporation); Starr v. Hagglund, 374 P.2d 316 (Alaska 1962) (citizen suit to enjoin capital move initiative).

Some of these cases were subsequently recognized as taxpayer standing suits. See K & L Distributors, Inc. v. Murkowski, 486 P.2d 351, 353 n.1 (Alaska 1971) (characterizing Jefferson v. Asplund, 458 P.2d 995, and Greater Anchorage Area Borough v. Porter and Jefferson, 469 P.2d 360 (Alaska 1970), as taxpayer standing actions); Moore 553 P.2d at 24 n.26 (citing Jefferson v. Greater Anchorage Area Borough, 451 P.2d 730, as an example of taxpayer standing).

> public's access to Alaska's courts in such a manner.

Id. at 1304.

We also discussed the question of taxpayer standing in Lewis, 559 P.2d 630. At issue was the legality of a three-way land trade between the state, the federal government, and a native regional corporation. Our characterization of the plaintiffs' interest in Lewis applies in this case. "Here, plaintiffs are seeking to protect mineral resources in land originally selected from the federal government under the Statehood Act. Their interest in the state's retention of mineral rights in state lands is no less significant than the aesthetic and environmental values sought to be vindicated in Sierra Club [v. Morton, 405 U.S. 727, 31 L. Ed. 2d 636 (1972)] and [United States v.] SCRAP[,412 U.S. 669, 37 L. Ed. 2d 254 (1973)]." 559 P.2d at 635. We declined to decide whether standing should be allowed in all taxpayer or citizen actions, but we allowed taxpayer standing in Lewis. Several factors influenced our conclusion: the land transfer allegedly violated specific constitutional limitations, the transfer was significant in size and in its potential economic impact on the state, and no one seemed to be in a better position than the plaintiffs to complain of the illegality of the transaction. Id.

In Carpenter v. Hammond, 667 P.2d 1204 (Alaska), appeal dismissed, 464 U.S. 801, 78 L. Ed. 2d 67 (1983), we affirmed, in an alternative holding, the standing of a citizen to challenge

the reapportionment of a House District in which she did not reside or vote. We stated:

> In the instant case, Carpenter alleges that District 2 violates a specific constitutional limitation and that the disputed transaction (the drawing of election district lines) arguably will have a significant impact on the state. Here the dispute over District 2 has been fully briefed, argued at trial and on appeal, and there is no one in a better position than Carpenter to litigate these issues. In our view, Carpenter also meets the standing criteria of Lewis.

Id. at 1210 (footnote omitted).

Gilman v. Martin, 662 P.2d 120 (Alaska 1983), involved a challenge to a municipal sale of land. We upheld taxpayer standing, stating that "[a]ny resident or taxpayer of a municipality has a sufficient interest in the disposition of a significant number of acres of the municipality's land to seek a declaratory judgment as to the validity of the disposition." Id. at 123.

In Hoblit v. Commissioner of Natural Resources, 678 P.2d 1337 (Alaska 1984), we held that plaintiff did not have standing as a taxpayer to challenge the sale of some twenty acres of state land. We distinguished Gilman on the grounds that the amount of acreage involved in Hoblit was not "significant." 678 P.2d at 1341. Similarly, we distinguished Lewis because the "'magnitude of the transaction and its potential economic impact on the State' which were determinative in Lewis are simply lacking here." Id. We remanded for a determination as to

whether or not the plaintiff had standing because of his status as an adjoining land owner. Id. at 1341-42.

This review of taxpayer-citizen standing in Alaska clearly demonstrates that taxpayer-citizen status is a sufficient basis on which to challenge allegedly illegal government conduct on matters of significant public concern. Taxpayer-citizen standing has never been denied in any decision of this court, except on the basis that the controversy was not of public significance,[3] or on the basis that the plaintiff was not a taxpayer.[4] However, Lewis and Carpenter suggested, without deciding, that taxpayer-citizen standing may be denied even in cases of public significance under certain circumstances.[5]

---

3. Hoblit, 678 P.2d 1337.

4. Greater Anchorage Area Borough v. Porter & Jefferson, 469 P.2d 360.

5. The Utah Supreme Court relied in part on Lewis and adopted a discretionary denial approach in Jenkins v. Swan, 675 P.2d 1145, 1150-51 (Utah 1983):

> If the plaintiff does not have standing under the first step [that is, interest-injury standing], we will then address the question of whether there is anyone who has a greater interest in the outcome of the case than the plaintiff. If there is no one, and if the issue is unlikely to be raised at all if the plaintiff is denied standing, this Court will grant standing. See, e.g., State v. Lewis, Alaska, 559 P.2d 630, 635 (1977). When standing is predicated on the assertion that the issues involve "great public interest and societal impact," we will retain our practical concern that the parties involved

(Footnote Continued)

In our view, taxpayer-citizen standing cannot be claimed in all cases as a matter of right. Rather, each case must be examined to determine if several criteria have been met. First, the case in question must be one of public significance.[6] One measure of significance may be that specific constitutional limitations are at issue, as in Carpenter and Lewis. That is not an exclusive measure of significance, however, as statutory and

---

(Footnote Continued)

> have the interest necessary to effectively assist the court in developing and reviewing all relevant legal and factual questions. The Court will deny standing when a plaintiff does not satisfy the first requirement of the analysis and there are potential plaintiffs with a more direct interest in the issues who can more adequately litigate the issues.
>
> The third step in the analysis is to decide if the issues raised by the plaintiff are of sufficient public importance in and of themselves to grant him standing. The absence of a more appropriate plaintiff will not automatically justify granting standing to a particular plaintiff. This Court must still determine, on a case-by-case basis, that the issues are of sufficient weight, see Jenkins v. Finlinson, Utah, 607 P.2d 289 (1980), and that they are not more properly addressed by the other branches of government. Constitutional and practical considerations will necessarily affect our decisions in cases where a plaintiff who lacks standing under step one nevertheless raises important public issues. These are matters to be more fully developed in the context of future cases.

6. See, e.g., Carpenter, 667 P.2d at 1210; Gilman, 662 P.2d at 123; Lewis, 559 P.2d at 635.

common law questions may also be very important.[7] Second, the plaintiff must be appropriate in several respects. For example, standing may be denied if there is a plaintiff more directly affected by the challenged conduct in question who has or is likely to bring suit. The same is true if there is no true adversity of interest, such as a sham plaintiff whose intent is to lose the lawsuit and thus create judicial precedent upholding the challenged action.[8] Further, standing may be denied if the plaintiff appears to be incapable, for economic or other reasons, of competently advocating the position it has asserted.[9]

---

7. See, e.g., Coghill v. Boucher, 511 P.2d 1297 (taxpayer's challenge of lieutenant governor's promulgation of regulations under elections statute).

8. See Flast v. Cohen, 392 U.S. 83, 100, 20 L. Ed. 2d 947, 962 (1968) ("federal courts will not entertain friendly suits . . . or those which are feigned or collusive").

9. One reason for the adversity requirement is to insure that the issues are well presented. As the Utah Supreme Court said, "When standing is predicated on the assertion that the issues involve 'great public interest and societal impact,' we will retain our practical concern that the parties involved have the interest necessary to effectively assist the court in developing and reviewing all relevant legal and factual questions." Jenkins, 675 P.2d at 1150-51.

In the analogous context of class action suits, one important criterion of a party's ability to effectively represent the class is its capacity, for economic and other reasons, to competently advocate its position. See 3B J. Moore and J. Kennedy, Moore's Federal Practice § 23.07[1.-1], at 23-215 (1985) (under Fed. R. Civ. P. 23(a)(4), "it has become routine to inquire into the competence, experience and vigor of the representative's counsel").

The instant case is undoubtedly one of public significance. If appellants prevail, the state must change its method of making state land available for mining. Some 50,000 existing mining claims may be affected. Under the current system, according to the appellants, the state is illegally giving up more than $100,000 annually in royalties. Further, the state is at risk of forfeiting to the United States extensive areas of state lands. The state has correctly acknowledged the significance of this case.

We turn now to consider whether appellants are appropriate parties to bring this suit. They are well represented by competent counsel who have forcefully presented their position. They are not sham plaintiffs; their sincerity in opposing the state's mineral disposition system is unquestioned. On the other hand, the state argues that there is a potential plaintiff with a more direct interest in the validity of the state's system. The state contends that the Attorney General of the United States may bring a forfeiture proceeding under section 6(i) and that this possibility means that appellants lack standing.

In our view, the mere possibility that the Attorney General may sue does not mean that appellants are inappropriate plaintiffs. In Carpenter, a resident and voter of the House District in question would theoretically have been more interested in litigating the question whether the district was malapportioned than was the non-resident plaintiff in that case. However, no such person had filed suit. We noted that the issues

had been fully presented at trial and on appeal by the plaintiff, and held that she had standing. 667 P.2d at 1210. Similarly, in Coghill v. Boucher, we suggested that candidates or political parties might be more interested than registered voters and poll watchers in challenging the vote-counting procedures at issue. However, they had not done so. We noted that if the plaintiffs were not afforded standing, "it may well be that any review of executive activity in this area would be completely foreclosed." 511 P.2d at 1034. Thus, the crucial inquiry is whether the more directly concerned potential plaintiff has sued or seems likely to sue in the foreseeable future. The Attorney General has not sued nor are there any indications that he plans to do so.

Moreover, the appellants' interest in this suit is different than the Attorney General's would be if suit were brought in the United States District Court pursuant to section 6(i). Appellants are interested in preserving to the state the economic value of these lands. The Attorney General, however, would be bringing an action for forfeiture of these lands, contrary to appellants' interest.

For these reasons we conclude that appellants have standing as taxpayer-citizens to maintain this action.

B. A Declaratory Judgment Action Interpreting the Provisions of Section 6(i) May be Maintained.

There has been much litigation concerning the meaning and scope of various statehood act land grants and their

restrictions.[10] There have been frequent questions of ownership of the granted lands as between private or governmental contestants.[11] Much of this litigation has occurred in the state courts. The question presented in this case is whether Congress intended to preclude all litigation concerning the meaning of section 6(i) by enacting the proviso which reads:

> That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

In our view, this question must be answered in the negative. It is clear that Congress intended that only the U.S.

---

10. E.g., Boyce v. Pima County, 208 P. 419 (Ariz. 1922); Jensen v. Dinehart, 645 P.2d 32 (Utah 1982); cf. State v. University of Alaska, 624 P.2d 807 (Alaska 1981).

11. E.g., Rodgers v. Berger, 103 P.2d 266 (Ariz. 1940) (appeal from suit by private mining claimant against state and other private claimants to quiet title in mining claim on land granted under statehood act; in trial court, state alleged it was owner because land was a school section; state did not appeal trial court's judgment for plaintiff); Texas Pacific Coal & Oil Co. v. State, 234 P.2d 452 (Mont. 1951) (corporation's suit against state to quiet leasehold title to oil and gas deposits under certain school land acquired by state under state enabling act); cf. Lassen v. Arizona, 385 U.S. 458, 17 L. Ed. 2d 515 (1967) (appeal from Arizona Supreme Court ruling in case between two state executive agencies to compel compensation to trust created under New Mexico-Arizona Enabling Act); State v. Walker, 301 P.2d 317 (N. M. 1956) (suit between State Highway Commission and Commissioner of Public Lands concerning rights of way or easements over state trust lands granted under New Mexico Enabling Act); Ross v. Trustees of University of Wyoming, 222 P. 3 (Wyo. 1924) (suit between governor and trustees concerning land granted and confirmed by act of admission for university purposes).

Attorney General could bring forfeiture proceedings and that such proceedings could only be brought in the United States District Court for the District of Alaska. No inference can be drawn, however, from either the context or the history of the Statehood Act that forfeiture proceedings were meant to be the only means by which a judicial interpretation of the meaning of section 6(i) could be obtained.

The sole reference to the land grant forfeiture provision which we have found in the legislative history appears in the Senate Report accompanying a 1954 bill providing for the admission of Alaska into the Union, S. 50, 83d Cong., 2d Sess. (1954):

> The Attorney General is authorized to take appropriate proceedings for forfeiture of any of the lands granted to the State which are disposed of contrary to these restrictions. In making the above provision, the committee has followed the practice prevalent in a number of mining States - a practice that has stood the test of time and experience.

S. Rep. No. 1028, 83d Cong., 2d Sess. 32 (1954). This reference is to the forfeiture clause of the Act of January 25, 1927 (commonly called the School Lands Act of 1927) 44 Stat. 1026, codified at 43 U.S.C. § 870(b (1982)), which extended to public land states grants of certain numbered school sections which were mineral in character.[12] This clause has not prevented judicial

---

12. The proviso in the School Lands Act states:

(Footnote Continued)

interpretation of the School Lands Act in non-forfeiture proceedings.[13] We hold that the identical language in section 6(i) has a similar, non-preclusive effect. It would be unusual in the extreme if a state court could not construe the meaning of its state's Statehood Act. In the absence of any indication that Congress intended to bar our state courts from interpreting section 6(i), we conclude that appellants' declaratory judgment action seeking an interpretation of section 6(i) may be maintained.

III. THE STATE'S DISPOSITION OF MINERALS VIOLATES SECTION 6(i) OF THE STATEHOOD ACT

Having determined that appellants have standing to bring this declaratory action, we now turn to their arguments on the merits. Their arguments may be summarized as follows. Section 6(i) of the Statehood Act provides that the state must reserve to itself all of the minerals in the mineral lands

---

(Footnote Continued)

> That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located.

43 U.S.C. § 870(b) (1982). This proviso is discussed in more detail in part IIIB of this opinion, infra p. 21.

13. E.g., Rodgers, 103 P.2d 266; Jensen, 645 P.2d 32.

granted to the state pursuant to section 6(a) and (b) of the Act. Furthermore, section 6(i) provides that "[m]ineral deposits in such lands shall be subject to lease by the State as the State legislature may direct." Appellants argue that because the state does not require the payment of rent or royalties from those miners whom the state permits to locate and extract hardrock minerals, the state violates section 6(i) of the Act. Appellants also argue that the state has violated section 6(i) by defining "mineral lands" subject to the lease requirement to mean those lands known to be of mineral character at the time of state selection, rather than all lands selected which are ultimately discovered to be of mineral character.

The appellants' arguments raise questions concerning the meaning of section 6(i), and of Congress's intent in granting the state mineral rights on the one hand, but restricting the state in its method of disposing of those minerals on the other. To answer these questions, we look to the plain language of section 6(i), to the legislative history of the Statehood Act, and to cases construing section 6(i). We also look to general principles of mining law to understand the framework within which section 6(i) must be analyzed.

A. General Principles of Mineral Disposition

When Congress passed the Alaska Statehood Act, there were three methods for disposition of minerals located on federal

lands: location, lease, and sale. Only locations and leases are relevant in the instant case.[14]

The location system is the oldest method of mineral disposition. It originated on the public domain as a matter of custom and was institutionalized by various statutes, the most important of which was the Mining Law of 1872.[15] Under the location system, the first claimant who discovers a valuable mineral deposit on unappropriated public domain, stakes and files a mining claim, and pursues it, has a legally protected interest. The locator is entitled to produce minerals from the deposit without paying rent or royalties, and has the right to obtain fee simple title by means of a patent issued by the United States government. 1 American Law of Mining § 30.01, at 30-3 (2d ed. 1985) (all references to American Law of Mining are to the 1985 edition unless otherwise noted).

Mineral leasing is the primary alternative to the location system. The Mineral Lands Leasing Act of 1920, 30 U.S.C. §§ 181-263 (1982), is the most important statute governing mineral leases; in many respects it has become the model for other federal mineral leasing acts. 1 American Law of Mining

---

14. The sale method pertains to certain varieties of sand and gravel and other common materials. 30 U.S.C. § 601 (1982).

15. Act of May 10, 1872, ch. 152, 17 Stat. 91. Portions of the Mining Act appear at 30 U.S.C. §§ 22-24, 26-30, 33-35, 37, 39-42, 47 (1982).

§ 20.01, at 20-6-7. The Mineral Leasing Act was passed to supersede the location system as to the minerals it covers because of Congress's perception that important revenues were being lost under the older system.[16]

Under the Mineral Leasing Act, competitive leases are issued on lands known to contain valuable mineral deposits. 30 U.S.C. §§ 262, 272, 283. Bidders buy competitive leases from the government for a premium established at a public sale. 43 C.F.R. §§ 3521.2-2, 3521.2-4, 3521.2-5 (1985). Where valuable mineral deposits are not known to exist, a prospecting permit may be issued to the first qualified applicant. See 43 C.F.R. § 3510.0-3. If the permittee discovers a valuable mineral deposit, the permittee may be rewarded with a preference right lease. 43 C.F.R. § 3520.1-1. No premium is charged the lessee of a preference right lease for the privilege of leasing. However, both competitive and preference right lessees must pay an annual rental fee[17] and a production royalty, which is a specified percentage of the gross value of the leased substance produced. 30 U.S.C. §§ 262, 283.

---

16. "[R]oyalties and rentals" were required "so that the Government may not be passing to title the natural resources without receiving something in return therefor." H.R. Rep. No. 1059, 65th Cong. 3d Sess., at 20. (1919).

17. The fees usually vary from 25¢ to $1.00 per acre, depending on the mineral. 1 American Law of Mining § 20.09[5]; see also 30 U.S.C. §§ 262, 283.

Appellants contend that although section 6(i) requires the state to lease mineral lands, and presumably to obtain rents or royalties, the state does not in fact receive any revenues when it grants miners the right to produce hardrock minerals from state lands. Thus, appellants argue that the state's mineral disposition method is for all practical purposes a location system, except that miners may not receive patent to the mineral estate.

The state responds that section 6(i) does not require a revenue-producing rent or royalty; rather, that choice is left to the state legislature's discretion. The state also asserts that it receives as consideration the continued exploration and development of its lands and the benefits that come from an active mining industry.

We shall next consider the language of section 6(i) and its legislative history to glean Congress's intent in its grant and restriction of mineral lands.

B. Origin of Section 6(i)

As we have already explained in part IIB of this opinion, the restrictive language in section 6(i) was derived from the 1927 School Lands Act.[18] In Lewis, we discussed the School Lands Act in another context:

---

18. Act of January 25, 1927 (An Act Confirming in (Footnote Continued)

In 1955, the Territory of Alaska, through its legislature, provided for a constitutional convention. Elected delegates adopted a Constitution on February 5, 1956, which was ratified by the people of Alaska on April 24, 1956. This Constitution adopted by the people of Alaska served as the basis for subsequent petitions to Congress for statehood and constituted an offer to accept the privileges and responsibilities of that status in accordance with its terms.

Throughout the process of drafting the Constitution and its adoption, there was considerable public controversy surrounding the issue of federal control over Alaska's power to dispose of its mineral resources. In statehood legislation for other states, Congress had limited land grants to non-mineral lands. Public lands, which were known to be chiefly valuable for commercial

---

(Footnote Continued)

States and Territories Title to Lands in Aid of Common or Public Schools), ch. 57, 44 Stat. 1026, 43 U.S.C. §§ 870-71 (1982).

43 U.S.C. § 870(b) (1983) provides:

> The additional grant made by this section is upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all the coal and other minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral rights in such lands shall be subject to lease by the State as the State legislature may direct, the proceeds and rents and royalties therefrom to be utilized for the support or in aid of the common or public school: Provided, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States district court for the district in which the property or some part thereof is located.

> mineral production at the time of the grants, were retained in federal ownership for management and disposition under a theoretically unified system of federal mineral law. In part to avoid the litigation over titles which had resulted from this policy, Congress passed the School Lands Act of 1927, 43 U.S.C. § 870. This act extended the original statehood land grants to embrace lands mineral in character. These additional grants, however, were made subject to a mineral alienation condition which prohibited state disposal of land without a reservation of minerals and permitted a forfeiture action instituted by the Attorney General on behalf of the United States in the event of such disposal [43 U.S.C. § 870(b)].
>
> Although the constitutions of most states were written after passage by Congress of the relevant enabling acts, Alaska's Constitution was drafted in the absence of a pre-existing act. While the delegates were therefore unsure of the particular restrictive language which might be chosen by Congress, they were aware of the history of federal control over state disposition of mineral lands and the likelihood that the United States would insist on retaining its usual powers. To many of the delegates and the people of the state, these restrictions were unpopular.

559 P.2d at 636 (footnotes omitted). Thus, we see in the School Lands Act language echoed fifty-one years later in section 6(i) of the Alaska Statehood Act: a requirement that grantee states reserve the mineral interest when disposing of granted lands, and a provision allowing grantee states to dispose of minerals only by lease.

Implicit in this quotation from Lewis are several points which must be emphasized. First, prior to the enactment of the School Lands Act, the statehood land grants of many western states did not include certain "school lands" sections

which were known to be mineral in character at the time for vesting.[19] Andrus v. Utah, 446 U.S. 500, 508, 64 L. Ed. 2d 458, 465 (1980); see also 3 American Law of Mining § 60.06[2], at 60-11-13. Second, if lands vested which were in fact of mineral character, but whose mineral character was not known at the time of vesting, the state owned the lands and minerals contained therein. United States v. Wyoming, 331 U.S. at 443, 91 L. Ed. at 1593. Third, in United States v. Sweet, 245 U.S. 563, 572-73, 62 L. Ed. 473, 481 (1918), the Supreme Court held that congressional grants of school lands to a state conveyed no title to lands known to be of mineral character, even if the grant did not expressly reserve such mineral lands to the federal government. In other words, states received title to lands of known mineral character only when Congress expressly granted "mineral lands." Finally, the School Lands Act of 1927 served as an express congressional grant of school lands of known mineral character. Most importantly, the term "mineral lands" as used in the School Lands Act[20] is a term of art, and refers to the time that the mineral character of the lands was appreciated, not to the

---

19. Title to surveyed sections vested at statehood; title to unsurveyed sections vested upon completion of an official survey. United States v. Wyoming, 331 U.S. 440, 443, 91 L. Ed. 1590, 1593 (1947).

20. And as used in the Alaska Statehood Act § 6(i). See part IIIE of this opinion, infra p. 37.

ultimately discovered nature of the lands.[21] See also Slaughter Memorandum infra p. 39.

C. Alaska Constitutional Response to Section 6(i)'s Restrictions

The School Lands Act restrictions had already been incorporated into the Alaska statehood bills pending in the 84th Congress when the delegates for the Alaska Constitutional Convention met in the winter of 1955-56. The restrictions were controversial because they signalled a change from the existing location-patent system to a leasing system. Ultimately, however, the benefits of statehood were seen to outweigh the doubts of some of the delegates concerning the section 6(i) restrictions. The state constitution was adopted containing a provision expressly consenting to the section 6(i) restrictions.[22]

---

21. The School Lands Act did not completely eliminate litigation of the question whether lands were of known mineral character at the time of survey, however, because the state's interest in lands of known mineral character vested on the effective date of the School Lands Act, rather than at the time of survey. See, e.g., Rogers, 130 P.2d 268.

22. Alaska Const., art. XII, § 13 states:

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

However, the framers also sought to preserve key elements of the existing location-patent system should Congress permit. Thus, they adopted Article VIII, § 11, which provides:

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

According to one commentator (also a delegate to the Constitutional Convention):

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

V. Fischer, Alaska's Constitutional Convention 134 (1975).

Congress did not recede from the section 6(i) restrictions. The people of Alaska ratified the constitution in 1956. The Statehood Act was passed by Congress and signed into law on July 7, 1958. Section 8(b) of the Act required the voters to vote in favor of three propositions, one of which was that:

> (3) All provisions of the Act of Congress approved [July 7, 1958] reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people.

Alaska Statehood Act § 8(c)(1). The voters accepted each proposition at the election held on August 26, 1958, and Alaska subsequently became a state on January 3, 1959. See generally Lewis, 559 P.2d at 636-39.

Having examined the origin of section 6(i) and the unsuccessful efforts of Alaska's Constitutional Convention to avoid its restrictions, we now turn to the legislative history for an understanding of Congress's intent underlying section 6(i)'s grant of mineral lands and leasing restrictions.

D. Congress Intended that Alaska Receive Rents and Royalties from Section 6(i) Mineral Leases to Ensure the New State's Economic Viability

The primary purpose of the statehood land grants contained in section 6(a) and (b) of the Statehood Act was to ensure the economic and social well-being of the new state. Udall v. Kalerak, 396 F.2d 746, 749 (9th Cir. 1968), cert. denied, 393 U.S. 1118, 22 L. Ed. 2d 123 (1969); United States v.

Atlantic Richfield Co., 435 F. Supp. 1009, 1016, 1021 n.47 (D. Alaska 1977), aff'd, 612 F.2d 1132 (9th Cir.), cert. denied, 449 U.S. 888, 66 L. Ed. 2d 113 (1980). One of the principal objections to Alaska's admittance into the Union was the fear that the territory was economically immature and would be unable to support a state government. For example, opponents of statehood claimed that "Alaska is not capable of sustaining statehood unless it is heavily subsidized by the other 48 States of the Union." 104 Cong. Rec. 9498 (1958) (statement of Rep. Smith). Similarly, another opponent to statehood argued that "The prevailing doubt of Alaska's ability to support itself is evidenced by the generous special considerations which are made for it in this statehood act." 104 Cong. Rec. 12,297 (1958) (statement of Senator Talmadge).

The congressmen who favored statehood conceded that it would impose an additional financial burden on the territory, but they maintained that the Statehood Act sufficiently provided for Alaska's financial well-being. The land grant of 103,350,000 acres was perceived by these congressmen as an endowment which would yield the income that Alaska needed to meet the costs of statehood. Representative Dawson said that:

> All grants include the mineral rights, but these rights must be retained by the State if the lands pass into private ownership. In other words, the mineral rights will always belong to the people of Alaska, and never to private individuals . . . .
>
> These provisions are the foundation upon which Alaska can and will build to the enormous benefit of the national economy

> shared by her sister States. We cannot make Alaska a "full and equal" State in name and then deny her the wherewithal to realize that status in fact.

104 Cong. Rec. 9361 (1958). The importance of mineral revenue to the new state is also highlighted by the following colloquy between Representative Miller and Alaska Territorial Senator William Egan:

> Miller: Do you see where you would get much income out of this 103 million acres you might select around, bearing in mind most of the forests and good land has been set aside by the Government now, or by the military? How much income would you derive from that to begin with?
>
> Egan: As to how much income would be derived, that would be entirely problematical, depending on the values that would be found there. . . . There are known deposits of almost every type of mineral.
>
> . . . .
>
> . . . I feel there would be development . . . .

Statehood for Alaska: Hearings Before the Subcomm. on Territorial and Insular Affairs of the House Comm. on Interior and Insular Affairs, 85th Cong., 1st Sess. 201-02 (1957) (remarks of Rep. Miller and William Egan, Alaska Territorial Senator and President of the Alaska Constitutional Convention).[23]

---

23. See also 104 Cong. Rec. 9360-61 (1958) (further remarks of Rep. Dawson; remarks of Rep. O'Brien); 104 Cong. Rec. 12,012 (1958) (remarks of Sen. Jackson).

The 103,350,000 acre grant ultimately provided in

(Footnote Continued)

That Congress recognized the financial burden awaiting the new state is clear from its debates. It is equally clear

---

(Footnote Continued)

section 6(a) and (b) of the Statehood Act was one of unprecedented size whether considered either absolutely or as a percentage of the total land area of the state. H.R. Rep. No. 624, 85th Cong., 1st Sess. (1957), reprinted in vol. 1 Alaska Statutes "History of Alaska Statehood," at 20. As the colloquy between Representative Miller and William Egan suggests, another rationale for the unprecedented size was that the federal government had already reserved the most valuable land and the new state would, in effect, have second choice. In the House, Representative Saylor said that "the choice areas, more than 95 million acres, have been reserved for Federal agencies." 104 Cong. Rec. 9340 (1958). In Senate discussion of the federal reservations, Senator Robertson read a portion of the House report on the Act: "[T]his tremendous acreage of [federal] withdrawals might well embrace a preponderance of the more valuable resources needed by the new State to develop flourishing industries with which to support itself and its people." 104 Cong. Rec. 12,019 (1958). Thus, the large grant of 103 million acres was deemed necessary because the lands available for state selection were perceived to be only marginally productive.

Furthermore, Congress recognized that the agricultural potential of the statehood grant land was limited. In debate, Senator Byrd commented: "In all of the more than 365 million acres of land in Alaska, only 2 million or about one-half of 1 percent, are arable." 104 Cong. Rec. 12,336 (1958). Because Congress realized that agricultural development would not yield the revenue that Alaska would need to support statehood, the Act contained the provision granting the new state title to the mineral estate underlying the land grants. Senator Kuchel said in debate:

> I believe, however, on the basis of the values of property in Alaska as they have been estimated, the tremendous wealth in the ground in minerals . . . , the State of Alaska will be able to make maximum use of the property which it will obtain under the bill from the Federal Government. This provision constitutes one additional assurance. I feel sure that economically the new government will succeed.

104 Cong. Rec. 12,035 (1958).

that the large statehood land grant and the grant of the underlying mineral estate were seen as important means by which the new state could meet that burden. Congress, then, granted Alaska the mineral estate with the intention that the revenue generated therefrom would help fund the new state's government.

The leasing restriction[24] in section 6(i) was intended to further the goal of state revenue production. As we have

---

24. Appellants and the state agree that the third sentence of section 6(i) requires that mineral deposits be disposed of only by lease. Intervenor Alaska Miners Association argues that the "shall be subject to lease" language is merely permissive: "[A]ll that this sentence requires is that 'leasing' be one of the mechanisms through which these lands would be made available for mining development. It does not require that leasing be the only disposal mechanism." (Emphasis in original.)

The Miners' position on this point is contradicted by the structure of section 6(i). If the third sentence was not meant to express the exclusive method of mineral disposition, it need not have been set forth at all. Further, the legislative history demonstrates a uniform belief that section 6(i) required leasing. For example, the Senate Committee Report concerning language that eventually became section 6(i) states:

> Subsection (k) [of S. 50, 83d Cong., 2d Sess. (1954)] provides that all grants made or confirmed under the act shall include mineral deposits. Thus, the fact that the lands desired by the State are known or believed to be valuable for minerals will not preclude the State from exercising its right of selection with respect to them under the several grants. However, in order to give an added measure of protection to the new State government, which inevitably will be inexperienced and untried, the committee amendment provides for certain restrictions upon the disposition by the State of mineral lands which it may select under the 100-million acre grant provided in subsection (b) or the

(Footnote Continued)

discussed, the restriction was taken from the 1927 School Lands

---

(Footnote Continued)

> 2,550,000-acre grant made in subsection (c). The restrictions are that the State must retain title to all the minerals in these lands, whenever any of them are sold or granted. The State may dispose of the minerals in these lands only by lease in such manner as the State legislature may direct.

S. Rep. No. 1028, 83d Cong., 2d Sess. 32 (1954) (emphasis added).

The Miners' argument that Congress intended the "shall be subject to lease" provision to be permissive is belied by the Miners' testimony objecting to this provision before the House Subcommittee on Territorial and Insular Affairs on March 15, 1957:

> Following is the statement of the Alaska Miners Association relative to mandatory leasing of mineral rights on all lands reserved to the new State of Alaska.
>
> . . . .
>
> We . . . believe that the grant of mineral rights on all these lands was done to aid the new State in meeting the added expense of statehood . . . .
>
> We believe that the well-intended actions contained in the enabling legislation will have an adverse effect and the mandatory leasing of mineral rights by the new State of Alaska under the conditions imposed would irreparably damage the development of Alaska's mineral resources . . . .
>
> We believe that the Legislature of the State of Alaska should be allowed to determine the disposition of the mineral rights on all State lands except those specifically reserved for schools . . . .
>
> All lands so claimed [by the state] shall have the mineral deposits reserved to the State and it shall be mandatory that the

(Footnote Continued)

Act. That language was copied advisedly so that Alaska would be on an equal but not a favored footing with other public land states with respect to the disposition of mineral lands.[25] The School Lands Act leasing requirement was expressly intended to be productive of proceeds, rents, and royalties, and congressional history indicates that the same result was intended in Alaska.[26]

(Footnote Continued)

> State lease the mineral rights; forfeiture of rights could result if disposed of contrary to provisions in the bills.

Statehood for Alaska: Hearings on H.R. 50, H.R. 628, and H.R. 849 Before the Subcommittee on Territorial and Insular Affairs, 85th Cong., 1st Sess. 217-18 (1957) (statement of Glen D. Franklin, Chairman, Legislative Committee, Alaska Miners Association) (emphasis added) (hereafter "Hearings on H.R. 50"). Thus, it is clear that the Miners Association recognized in 1957 that section 6(i)'s provision requiring that mineral lands be subject to leasing was a mandatory provision. Their argument to the contrary today is without merit.

> 25.
> In other words, the thought was that Alaska should be allowed to obtain mineral lands only if it would administer them in substantially the same manner that States now having mineral land grants are required to administer the lands obtained by them under those grants. This is evident from the close parallelism between the conditions proposed to be imposed upon Alaska and those contained in the 1927 [School Lands] act.

Memorandum from Herbert J. Slaughter, Chief, Branch of Reference, Division of Legislation, Department of the Interior, to the Honorable E.L. Bartlett, at 7-8 (Nov. 7, 1955) (regarding the mineral lands provision of the Alaska Statehood bills) (hereafter "Slaughter Memorandum").

26. S. Rep. No. 1028, supra n.24 (noting the "similar provision for the protection of the mineral school lands," in the School Lands Act); Slaughter Memorandum, supra n. 25. In State

(Footnote Continued)

Further, in congressional hearings, the section 6(i) leasing requirement was equated with the "leasing procedures as provided under the Leasing Act of 1920."[27] As previously noted, the federal Mineral Leasing Act was passed rejecting the location system for certain minerals in order to provide revenue to the United States.

Moreover, although the mineral leasing systems of other states differ from the federal mineral lands leasing system, they are uniform in requiring the payment of rent, or royalties, or both. 3 American Law of Mining § 63.054(d), at 63-28.

> State statutes may be divided into two principal categories describing the manner of payment of consideration for a lease; first, those that require both rents and royalties but credit the former against the latter or cease rental when the payment of royalties begins; second, those that require both rents and royalties as distinct and independent considerations.

(Footnote Continued)

v. Lewis, we explained that

> The lands to be selected by the state included mineral lands so as to be consistent with the rights granted other states as a result of the School Lands Act of 1927 . . . . The restrictions placed by Congress on alienation of Alaska's lands were of the same import as those set forth in that Act and applicable to other states.

559 P.2d at 638.

27. Hearings on H.R. 50, supra n.24, at 220 (Rep. Aspinall); see also id. at 231 (Rep. Abbott).

Id. at 63-29 (footnotes omitted). We therefore conclude that the leasing requirement in section 6(i), considered in the context of the School Lands Act, the Mineral Leasing Act, other statehood mineral grants,[28] and mineral leasing systems in other states, mandates a system under which the state must receive rent or royalties for its mining leases.[29]

---

28. See, e.g., Oklahoma Statehood Act, Act of June 16, 1906, 34 Stat. 267, 273 (expressly including mineral lands, but prohibiting state from disposing of such mineral lands except by short-term lease). Statehood mineral grants are to be considered in light of the mining policies in existence at the time the grants are enacted. Utah v. Bradley Estates, 223 F.2d 129, 130 (10th Cir. 1955).

29. The state argues that the language in the third sentence of section 6(i), "as the state legislature may direct," gives the state the discretion not to charge rent or royalties. It cites as authority for this proposition language from the Slaughter Memorandum. The memorandum first discusses earlier Alaska statehood proposals allowing the state to sell lands it selected, including mineral rights, with a reservation of a royalty on all minerals produced therefrom. Concerning these proposals, the memorandum states:

> These earlier proposals, it will be noted, differ in a number of respects from the restrictions contained in the bills now pending. In particular, the current language expressly calls upon Alaska to adopt a mineral leasing system, while the earlier versions permitted the mineral deposits to be disposed of along with the surface, provided a royalty interest was reserved by the State. On the other hand, the current language does not attempt to prescribe maximum or minimum rates of royalty as did the earlier versions, but appears to leave the terms of leasing wholly to the discretion of the State legislature. From a practical standpoint, this second difference may be more important than the first, since if the Alaska legislature is left, as

(Footnote Continued)

Although Alaska law requires mining leases for extracting hardrock minerals on those mineral lands thought to be subject to section 6(i),[30] the statutes do not require the payment of rent or royalties. AS 38.05.205, .210. Alaska Statute 38.05.205(b) speaks of an annual rental of not less than the annual labor requirement which would be imposed if the lease were a location. However, no rent actually needs to be paid, because the lessee may credit the value of annual labor performed against the rental. Annual labor is required to ensure that the claim is worked so that the miner does not locate numerous claims and obtain the right to exclude others. 2 American Law of Mining

---

(Footnote Continued)

> H.R. 2535 and S. 49 now intend to provide, with the untrammelled [sic] right to frame its own mineral leasing laws, it can, if it so ch[o]oses, establish priorities that will tend to keep the surface and mineral rights in the same hands and can, in general, fit the provisions of its mineral leasing system to whatever may be its concepts of the public interest.

Slaughter Memorandum, supra n.25, at 9-10.

We are unable to read this language in Slaughter's memorandum as broadly as the state suggests. The memorandum does not suggest that the state was free from the duty to charge rent or royalties. In fact, Slaughter states that "Alaska should not be accorded greater freedom in the administration of mineral lands than that accorded existing States having Congressional land grants." Id. at 2. As noted previously, other states under the School Lands Act were required to lease mineral lands in order to generate rents and royalties.

30. "Hardrock" minerals are those which were subject to location under federal mining laws as of the beginning of statehood, January 3, 1959. A.S. 38.05.185.

§ 7.2, at 102 (1st ed. 1983); Chambers v. Harrington, 111 U.S. 350, 353, 28 L. Ed. 452, 453 (1884) ("Clearly, the purpose was . . . to require every person who asserted an exclusive right to his discovery or claim to expend something of labor or value on it as evidence of his good faith and to show that he was not acting on the principle of the dog in the manger."). It is not a source of revenue to the landowner. Alaska's mineral leases are in substance indistinguishable from state mining locations.[31] Because they do not require rents or royalties, the state hardrock mineral leasing laws do not meet the leasing requirement of section 6(i).

E. The Section 6(i) Leasing Requirement Applies Only to Statehood Grant Lands Whose Mineral Character was Known at the Time of State Selection.

The appellants argue that the section 6(i) leasing requirement applies to all lands granted under section 6(a) and (b) which contain minerals. Their argument may be summarized as follows. Under the first sentence of section 6(i), all mineral deposits in selected lands are conveyed regardless of when the deposit's existence is first known. The term "mineral lands" in

---

31. A letter authored by John Sims, Director of State Office of Mineral Development, described the proposed state leasing system which is now reflected in AS 38.05.205 as a system "which allows a miner on State land virtually all the rights and privileges of the 1872 Federal Mining Law with the express exclusion of patent right." Letter from John Sims, Director, Alaska Office of Mineral Development, to Howard J. Grey, Executive Director, Alaska Miners Association (Feb. 23, 1981).

the second sentence of section 6(i), to which "such lands" in the third sentence of section 6(i) relates, refers to the same subject as the "mineral deposits" grant of the first sentence. Thus, all lands containing minerals are subject to the leasing requirement, regardless of when the minerals are discovered.

We agree with appellants that the grant language of the first sentence of section 6(i) contains the key to understanding the scope of the leasing requirement. We do not agree, however, that the grant language was intended to convey mineral deposits in selected lands whose mineral character was unknown at the time of selection. Unknown deposits would be conveyed automatically as a part of the section 6(a) and (b) grants without the use of the section 6(i) grant language. The section 6(i) grant was necessary so that known mineral deposits would be conveyed. See notes 19 - 21 and accompanying text, supra.

This interpretation is confirmed by the Senate Report on an early statehood bill (S. 50, 83d Cong., 2d Sess., (1954)) which states:

> By the terms of previous statehood bills, and of S. 50 as introduced, the State was to have been permitted, under the land-grant provisions of those bills, to select large acreages of land, but in all previous bills, the State would have been estopped from choosing . . . those lands known or even believed to be mineral in character. These severe limitations in previous statehood bills on the State's right to select were not always apparent from the bare language of those measures. Yet they existed within the legal and judicial interpretations which have heretofore been given as to the meanings of certain words and

> phrases of these previous proposed statehood bills.
>
> If all the resources of value were withheld from the State's right of selection, such selection rights would be of little value to the new State. As a part of this new approach toward statehood, your committee has felt obligated to broaden the right of selection so as to give the State at least an opportunity to select lands containing real values, instead of millions of acres of barren tundra.
>
> To attain this result, the State is given the right to select lands known or believed to be mineral in character (subsection k of section 5) . . . .[32]

S. Rep. No. 1028, supra n.24, at 6. The Report explains that subsection 5(k), the precursor to section 6(i), "provides that

---

32. The report of the Committee on Interior and Insular Affairs on H.R. 7999, which became the Statehood Act, in language reminiscent of the Senate Report makes the same point:

> If the resources of value are withheld from the State's right of selection, such selection rights would be of limited value to the new State. The committee members have, therefore, broadened the right of selection so as to give the State at least an opportunity to select lands containing real values instead of millions of acres of barren tundra.
>
> To attain this result, the State is given the right to select lands known or believed to be mineral in character (sec. 6(i)).

H.R. Rep. No. 624, 85th Cong., 2d Sess. (1957), reprinted in 1958 US Code Cong. & Admin. News 2933, 2939. The Committee thus used the phrase "lands known or believed to be mineral in character" as synonymous with the "mineral deposits" language in the first sentence of section 6(i).

all grants made or confirmed under the act shall include mineral deposits. Thus, the fact that the lands desired by the State are known or believed to be valuable for minerals will not preclude the State from exercising its right of selection with respect to them under the several grants." Id. at 32.

The need for and the meaning of the grant language is also confirmed in the Slaughter Memorandum:

> The bills in the 84th Congress for the admission of Alaska into the Union contain a provision which affirmatively declares that the land grants made or confirmed by those bills shall include mineral deposits, and which then proceeds to impose certain express restrictions upon the manner in which Alaska may administer any mineral lands so obtained by it. . . .
>
> The reasoning which prompted the adoption of the provision in question by the Senate Committee is understood to be (1) that mineral deposits must be expressly mentioned in order for mineral lands to be encompassed by a Congressional land grant to a State; and (2) that Alaska should not be accorded greater freedom in the administration of mineral lands than that accorded existing States having Congressional land grants. . . .
>
> With respect to those situations where, as was true of the Utah grants and the California school section grant, the law making the grant neither affirmatively included nor affirmatively excluded mineral lands, the Supreme Court has held that the failure to mention mineral lands was tantamount to an express exclusion of them from the grant. . . .
>
> The members of the Senate Committee on Interior and Insular Affairs who took an active part in the study of S. 50, 83d Congress, considered that, in the light of the holdings of the Supreme Court, statutory language expressly including mineral deposits within the contemplated land grants to Alaska

> would probably be necessary in order for these grants to encompass mineral lands.

Slaughter Memorandum, supra n.25, at 1-6 (citation omitted). Thus, the grant of mineral deposits in the first sentence of section 6(i) and the term "mineral lands" as used in the second sentence of section 6(i) both relate to mineral deposits in lands of known mineral character.

Appellants cite as support for their interpretation testimony of a representative of the Alaska Miners' Association before the House Subcommittee on Territorial and Insular Affairs on March 15, 1957. The representative, Mr. Franklin, assumed that mandatory leasing applied to all lands selected under what is now section 6(a) and (b) of the Statehood Act. See supra n.24. Several congressmen seemed to join in this assumption. However, the question whether all lands selected under section 6(a) and (b), or merely those lands known to be mineral in character at the time of selection, would be subject to mandatory leasing was not addressed.

Appellants also point out that S. 50, as amended by the Committee on Interior and Insular Affairs (83d Cong., 2d Sess. (1954)), and H.R. 2536 (83d Cong., 2d Sess. (1954)), which closely followed the language of S. 50, contained a final sentence which provided: "For the purposes of this subsection the mineral character of lands granted to the State of Alaska shall be determined at the time patent issues and the patent shall be conclusive evidence thereof." This language was stricken at the request of Delegate Bartlett who stated:

> That amendment is offered at the suggestion of the Governor of Alaska and the Land Commissioner of Alaska. They were somewhat apprehensive about the rapidity with which lands would move to the new State if the requirement remained in that the mineral character of all the land would have to be determined in advance. And the rights of the United States, the attorneys tell me, are adequately protected in the foregoing part of that subsection.

Hawaii-Alaska Statehood: Hearings Before the Committee on Interior and Insular Affairs, 84th Cong., 1st Sess. 332 (1955) (statement of Delegate Bartlett) (hereafter "Interior Committee Hearings"). The committee chairman asked Delegate Bartlett: "It is your view, Mr. Bartlett, that language is surplusage and is not necessary?" Delegate Bartlett answered: "I do not think it is surplusage, but I will agree with the Governor and the Commissioner of Lands of Alaska, that had best be deleted." Id. The appellants argue that by agreeing to the deletion of this language, Congress must either have intended to utilize the traditional test of mineral lands or to define mineral lands as those containing minerals no matter when the minerals are discovered. The argument continues that since Congress was aware that considerable litigation had resulted under the enabling acts of other states as to whether lands were or were not mineral in character, Congress could not rationally have intended to employ the traditional test.

While we agree that administrative problems would be avoided if the section 6(i) limitations applied to all lands granted under section 6(a) and (b), we think it is reading too

much into the deletion of the quoted language to conclude that Congress meant by the deletion to change the meaning of "mineral lands" as used in the second sentence of the section. The "determination at patent" language demonstrates that Congress intended the section 6(i) limitations to apply only to section 6(a) and (b) lands of known mineral character. If this were not so there would be no reason for the determination of mineral character at patent. There is no suggestion that Congress intended to change the meaning of "mineral lands" in the second sentence by deleting the final sentence. Both the Chairman and Delegate Bartlett referred to this amendment as "pro forma," a characterization which could not accurately be used if the amendment were intended to change the definition of mineral lands. Interior Committee Hearings, supra p. 41, at 331, 333.

Appellants' final point is that construing "mineral lands" to mean all lands where minerals are found would further the congressional policy of assuring that the State of Alaska not squander the resources which it was granted. While it is true that the broader definition of mineral lands advocated by appellants would extend the protection of the section 6(i) restrictions, that does not mean that those restrictions were meant to have the reach which appellants contend. The context and history of section 6(i) heretofore cited persuades us that

its restrictions were intended to apply only to lands whose mineral character was known at the time of selection.[33]

CONCLUSION

We conclude that appellants have standing to maintain this declaratory judgment action, that the state's mineral leasing system violates section 6(i) of the Statehood Act because it does not require the payment of rent or royalties on mining leases, and that section 6(i) applies only to those lands known to have been mineral in character at the time of state selection. Appellants' state constitutional and public trust theories depend on the meaning of the grant and restrictions of section 6(i). Since section 6(i) directly controls, we have no occasion to examine those theories further. For the above reasons, the judgment is REVERSED and this case is REMANDED with directions to enter a declaration in accordance with this opinion and for such other further proceedings as may be appropriate.[34]

---

33. For convenience, we have referred to the relevant event as the time of selection. Whether this is the time that the state files its selection application, or some later event such as the tentative or final approval of the selection, is not an issue in this case or on which we express an opinion. Further, we observe that there is room for debate concerning how much must be known about the mineral character of selected lands to qualify them as mineral lands. We also intimate no view on this question as it is not before us.

34. The intervenors raise several other points in defense of the judgment below. We have examined each of them and find that they lack merit.

reclamation/rehab.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REWRITE

cd amend regs to inc. some rehab reqts? (based on exg law)

[A] Name & Address

MISCELLANEOUS LAND USE PERMIT
MLUP A-87[B]

The Alaska Department of Natural Resources, Division of Mining, in accordance with and subject to the requirements and general stipulations of AS 38.05 (Alaska Land Act) and the Alaska Administrative Code, Title 11, Chapters 86 (Mining Rights) and 96 (Miscellaneous Land Use), hereby grants a Miscellaneous Land Use Permit to [C] for activities upon state-managed lands described in Annual Placer Mining Application No. A-87[B] for ADL Nos. [D] only. No activities are authorized on claims or any portions of claims that are staked on state-selected ground or top-filed on any federal mining claim(s).

TERMS OF PERMIT

This effective dates of this permit are [E] through 12/31/87.

sec. 1 GENERAL PROVISIONS. Operations under this permit shall be conducted in conformance with applicable federal, state, and local laws and regulations.

sec. 2 SURFACE USE. You do not have exclusive use of the surface of the location. The issuance of this permit does not automatically authorize you to restrict public access to the surface; you may restrict public access to the surface only if authorized to do so under an approved plan of operations or land use permit (11 AAC 86.145).

sec. 3 SURFACE STRUCTURES. Surface structures built or placed within the boundaries of a mining property must be necessary for mineral prospecting and development as authorized under an approved plan of operations or land use permit (11 AAC 86.145). The issuance of this permit does not automatically authorize you to build or place structures within the boundaries of a mining property.

sec. 4 OTHER OPERATIONS. (a) The issuance of this permit does not mean you will not need ~~any~~ other permits for the lands described in this permit. Valid existing rights acquired on these lands are not adversely affected by this permit. (b) Where this permit grants the right to enter land owned, leased, or otherwise lawfully occupied by another, you must make provisions with the owner, lessee, or lawful occupant of the land to pay for any damages you may cause when you enter the land (AS 38.05.130).

sec. 5 DEFAULT. If you fail to comply with the terms and stipulations of this permit or with the provisions of the Miscellaneous Land Use Regulations and, after receiving written notice, ~~you~~ fail to remedy such default within the time specified, the Director may cancel this permit.

sec. 6 SPECIAL STIPULATIONS. The following stipulations also apply to this permit:

1) Top soil shall be saved and protected from erosion. No top soil shall be disposed of in natural water bodies. (We suggest that you dispose of your top soil in areas where there are graded tailings--doing this encourages natural re-vegetation.)

2) Tailings shall be graded at the close of each season to approximate the surrounding ground contours.

Completion reports are not required. Please be advised that the issuance of this Miscellaneous Land Use Permit neither relieves you from securing other permits which may also be required by federal, local, or other state authorities, nor does it constitute the certification of any property right or land status.

Attached is a summary of some regulations which apply to this permit. If you have any questions about these regulations or tihs permit, please contact Judd Peterson at 474-7147.

ORIGINAL

ATTACHMENT TO
MISCELLANEOUS LAND USE PERMIT

Mining rights of locatable minerals on State lands are addressed in the Constitution of Alaska, Title 38 of the Alaska Statutes and Chapters 86, 88 and 96 of Title 11, Alaska Administrative Code (State regulations). In summary these laws and regulations state that rights to deposits of locatable minerals on State land that is open to claim staking may be acquired by discovery, location and filing.

The locator will have exclusive right of extraction of the minerals subject to provisions set forth in the above referenced statutes and regulations. These provisions establish the rights of the locator, protect the rights of the general public on public domain land, and provide controls over activities on State lands in order to minimize adverse effects on the land and its resources. For example, (a) all operations are subject to inspection without notice (11 AAC 96.080), (b) bonding may be required (11 AAC 96.060), and (c) timber and gravel on the claims belongs to the State and may not transported off the claims, sold, or used for purposes other than necessary for the mining operation. However, gravel and timber may be purchased from the State and subsequently resold.

All operations are subject to the following general stipulations (11 AAC 96.140):

GENERAL STIPULATIONS. All land use activities are subject to the following provisions:

1) Activities employing wheeled or tracked vehicles shall be conducted in such a manner as to minimize surface damage.

2) Existing roads and trails shall be used whenever possible. Trail widths shall be kept to the minimum necessary. Trail surface may be cleared of timber, stumps, and snags. Due care shall be used to avoid excessive scarring or removal of ground vegetative cover.

3) All activities shall be conducted in a manner that will minimize disturbance of drainage systems, changing the character, polluting, or silting of streams, lakes, ponds, water holes, seeps, and marshes, or disturbance of fish and wildlife resources. Cuts, fills, and other activities causing any of the above disturbances, if not repaired immediately, are subject to such corrective action as may be required by the Director.

4) The Director may prohibit the disturbance of vegetation within 300 feet of any waters located in specially designated areas as prescribed in 11 AAC 96.010(2) except at designated stream crossings.

5) The Director may prohibit the use of explosives within one-fourth mile of designated fishery waters as prescribed in 11 AAC 96.010(2).

STEVE COWPER
GOVERNOR

Sam → Nick
/
file

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

MEMORANDUM

TO: Commissioner Judith M. Brady
Department of Natural Resources

Commissioner Don W. Collinsworth
Department of Fish and Game

Commissioner Dennis D. Kelso
Department of Environmental Conservation

DATE: March 30, 1987

PHONE: 465-3500

FROM: Steve Cowper
Governor

SUBJECT: Placer Mining

I have assigned a high priority to resolving the conflicts between placer miners and other water users. The miners believe they are faced with an impossible situation; they express concern about unattainable standards and unreasonable regulations. At the same time, other users of Alaska's water--fishermen, village residents, recreational users--express concern about the impacts of placer mining on their uses; they fear degradation of water quality leading to a loss of drinking water, fish habitat, and other values.

We need a clear set of rules, standards, and procedures that everyone can understand. Miners must be able to operate with the assurance that rules will not keep changing.

Continuation of the status quo is not acceptable.

We need to resolve these conflicts in a positive way, avoiding the adversarial relationships that have characterized this policy area.

A stable resolution will require two things. It must be clearly legal under the federal Clean Water Act; and it must protect the rights of both placer miners and other water users.

Only if these two requirements are met can we avoid years of slow, expensive, unpredictable litigation with the inevitable loss of state resource management prerogatives to the courts.

We can help bring about a stable resolution to the problem. By ensuring reasonable, litigation-proof rules and fair enforcement, we can create a regulatory climate in which placer miners and

other water users will have confidence. In addition, I want my administration to set a positive, cooperative tone: working with the miners and other groups to find policy options and mediating between the miners and other users to avoid or resolve conflicts.

I direct you, as commissioners of the state's three resource agencies, to work together to complete the following tasks, before the 1988 mining season.

1. Enforcement Policy

The state's enforcement program should emphasize technical assistance to miners who are making good faith efforts to maintain water quality, as well as protection of community drinking water sources, fish resources, and recreational uses. Please take appropriate actions to ensure that enforcement action is not taken against any miner who operates proper settling ponds for a violation of water quality standards where the violation results from upstream sources. In addition, no miner should be required to clean up natural background conditions or an upstream violation.

2. Technical Assistance

I expect the Department of Natural Resources, as well as the Departments of Environmental Conservation (DEC) and Fish and Game (DF&G) to provide technical assistance to operators in following state regulations. Nowhere is this more important than in working with placer miners.

Commissioner Brady has requested and received my support for two new positions in the Division of Mining to provide appropriate technical assistance to placer miners in part to help them mine more efficiently and to satisfy water quality requirements. Although neither DEC nor DF&G has staff added to their respective budgets for these functions, I expect you to work cooperatively with the placer miners in order to prevent water quality problems, where possible, or to resolve problems. Technical assistance will emphasize innovative operating techniques and improved mining methods. I believe this assistance can also help develop a more positive relationship between all three agencies and the miners.

3. Review of Regulations and Policies

Please conduct a thorough review of your agency's regulations and policies in order to determine whether there are duplicative provisions or unnecessary requirements and to take action as needed to correct any deficiencies. I would appreciate your providing me a written report describing your findings and any corrective actions you propose. Because this subject is of interest to the Alaska Minerals Commission (AMC), please consult with the Commission about the results of your review.

4. State Water Quality Regulations

Commissioner Kelso and the Alaska Miners Association (AMA) have begun a process to develop agreement about what the Clean Water Act requires and to identify areas of flexibility available to the state in water quality regulations, especially areas where site specific factors can be considered.

I fully support this effort. Although there are no guarantees that a solution will be found, the process may produce valuable tools that can be used singly or in combination. It is important that views of fishermen, environmental groups, village representatives and other interested Alaskans, as well as the miners, be considered. Consultations with these other groups should be part of the overall effort. In addition, please keep the Placer Mining Advisory Group and the AMC apprised of your efforts.

5. State Permitting

The tri-agency permit application process must operate efficiently and a placer miner should be able to deal with state permits through a single application. Please review the permitting process and take any actions you deem appropriate to improve the efficiency of this system.

6. BLM vs. Sierra Club Lawsuit

By copy of this memorandum, I am directing the Department of Law to file an amicus curiae brief in this lawsuit. It is important that the brief be crafted carefully to ensure that the state can mediate, if necessary, to enable responsible placer mining to continue. It is also important that the brief avoid issues which could prove detrimental to the state's overall interests on other resource matters involving the federal government. Please provide assistance to the Department of Law in preparing these materials.

Our basic position should oppose judicial relief that would penalize miners for any errors that the court concludes BLM has made. We should oppose a blanket injunction that precludes all mining and should urge that if the court finds for the appellants, the order be framed in such a way that the state can help the parties negotiate a solution.

7. Federal Effluent Guidelines (Best Available Technology Economically Achievable)

The Environmental Protection Agency (EPA) has just published its proposed effluent guidelines for the placer mining industry, establishing the pollution control technology considered by EPA to be economically achievable.

Because these guidelines are so important to the industry, I intend to see that the state is prepared to participate fully in the technical debate on their merits. By copy of this memorandum, I am asking the Department of Commerce and Economic Development to join with your departments in taking a hard look at the guidelines to see if they are based upon realistic assumptions and Alaskan data. When you have completed your analysis, we will prepare comments to EPA. While the state does not have a direct decision-making role on the effluent guidelines, I strongly believe that a well-reasoned, analytical position will have the greatest success in advancing the state's view.

My goal is for the state to participate as constructively as possible in creating a stable regulatory climate for the placer mining industry. A successful approach must be fair to the placer miners and acceptable to other water users. In order to reach this goal, the state must apply its best resources toward helping to find a reasonable approach. This is especially important in technical debates, such as discussion of the effluent guidelines. I am confident that through our combined efforts we can achieve the kind of progress that this important public policy issue deserves.

cc: Senator Don Bennett
Senator Bettye Fahrenkamp
Senator Jack Coghill
Senator Johne Binkley
Senator Willie Hensley
Representative Adelheid Herrmann
Representative Mike Miller
Attorney General Grace Berg Schaible
Department of Law
Commissioner Tony Smith
Department of Commerce and Economic Development
Rod Swope, Special Assistant
Office of the Governor
Bob Grogan, Associate Director
Division of Governmental Coordination

THE FOLLOWING DOCUMENT HAS

NOT BEEN FILMED BUT IS

AVAILABLE IN THE ORIGINAL

FILE

RAILBELT ENERGY

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

RailBelt

Energy

Alaska State Legislature

Senate Resources Committee

Box V
Juneau, Alaska 99811
(907) 465-4907

April 8, 1987

MEMORANDUM

TO: Representative ~~Cotton~~ COTTEN, Chairman
House Resources Committee

FROM: Senator Coghill, Chairman
Senator Resources Committee

RE: Today's Railbelt Energy Joint Meeting

Would you please announce that the Joint Senate/House Resources meeting will be today from 1:30 p.m. to 5 p.m. in the Senate Finance Chambers.

The agenda follows:

1:30 p.m. Overview of Railbelt Energy Council Report
2:00 p.m. Presentation by utilities on Railbelt Energy issues
2:30 p.m. Questions by House and Senate Resources Committees
3:00 p.m. Public Hearings on SB 205, SB 206, SB 109 and HB 120 and other energy related legislation (SB 159)

Official Business

COMMITTEE:
SENATE - HOUSE RESOURCES

DATE: MARCH 8, 1987

SIGN-IN

Subject of meeting:
SB 205

AN ACT RELATING TO THE RAILBELT ENERGY COUNCIL; AND PROVIDING FOR AN EFFECTIVE DATE

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
DALE TEEL	Box 6288 Anchorage	907 264-3656	ENSTAR	yes
RICHARD BARNES	" " "	907 2775557	"	on questions
Dave Hutchens	237 E. Fireweed #301, Anch.	276-3335	AREC H	yes
JOHN CALHOUN	HOMER	235 8121	CITY OF HOMER	YES

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

Joint Senate + House Resources 4-8-87

Rick News

RAILBELT ENERGY PLAN

April 8, 1987

Last year, after the Susitna Hydroelectric Project was cancelled, the Legislature established the Railbelt Energy Fund and the Railbelt Energy Council. The purpose of the Railbelt Energy Fund was to reserve approximately $280 million, previously earmarked for Susitna, for other Railbelt energy projects. A major purpose of the Railbelt Energy Council was to recommend such projects.

In creating the Railbelt Energy Fund and the Railbelt Energy Council, legislators and administration officials made one thing very clear to the seven electric utilities in the region: They needed to agree on a plan of action and they needed to work with and through the Railbelt Energy Council.

This has been done.

For the first time ever, all seven Railbelt utilities, which together serve more than three quarters of the State's population, have agreed on a Railbelt energy development plan. That plan consists of two basic elements: Completion of the Bradley Lake Hydroelectric Project and completion of a solid Railbelt transmission intertie system.

The plan was unanimously recommended by the Railbelt Energy Council in its January 24, 1987, report to the Legislature. Moreover, the plan has been endorsed by a broad Railbelt coalition that includes business, labor and government leaders. Many local governments and chambers of commerce throughout the Railbelt have passed formal resolutions of support.

Among the governmental entities are the Anchorage Municipal Assembly, Fairbanks City Council, Matanuska-Susitna Borough, Wasilla City Council, Palmer City Council, Kenai Peninsula Borough, Homer City Council, Kenai City Council and Soldotna City Council, as well as the Kenai Caucus and Unified Fairbanks organizations. Labor supporters include the Alaska AFL-CIO and its 48 unions and affiliates, including the International Brotherhood of Electrical Workers Local 1547, and Teamsters Union Local 959. Local chambers of commerce that have passed resolutions include Anchorage, Fairbanks, Wasilla, Palmer, Big Lake, Willow, Talkeetna, Kenai, North Kenai and Homer. The Alaska State Chamber of Commerce has made the Bradley Lake project and the intertie system one of its highest legislative priorities.

THE PROJECTS

The Bradley Lake Project is a 90-megawatt hydroelectric facility under construction near Homer. It is scheduled for completion in 1990, and is designed to accommodate future enlargement to 135 megawatts. The Railbelt transmission system has two components: Upgrade of the existing 138-kilovolt Anchorage-Fairbanks transmission line to 345 kilovolts, and construction of a 230-kilovolt circuit from Anchorage to the lower Kenai Peninsula.

Bradley Lake was originally estimated to cost $408 million, including financing. That figure is now down to $350 million, and may drop even more given the sluggish economy and lower than expected inflation growth. The interties are estimated to cost $200 million. That figure, too, could drop.

BENEFITS

Separate studies by the Division of Policy in the Governor's Office, the House Research Agency and the Alaska Power Authority all show positive benefits for Bradley Lake and the interties, even when considered on their own.

A February 25, 1987, analysis by the Division of Policy and a March 18, 1987, analysis by the House Research Agency both estimate savings of approximately $85 million for Bradley Lake over the natural gas-fired generation alternative. Even under a much more conservative and unlikely scenario where the gas alternative would be delayed from the early 1990s to 1998, the House Research Agency analysis still projects savings of $36 million for Bradley Lake.

A March 1987 economic analysis prepared by a private consultant for the APA shows total quantifiable benefits of $423 million for the Anchorage-Fairbanks and Anchorage-Kenai Peninsula interties combined. This does not count other, less quantifiable benefits such as increased power system reliability and the facilitation of economic development.

Although the utilities believe the benefits cited in the above studies are understated, and that savings may be even higher, all the work to date agrees that Bradley Lake and the interties have a positive value as independent projects. When considered together, the benefits are even greater. Among the benefits of the combined Bradley Lake-intertie plan are these:

-- Long-term electric rates will be lower than otherwise for the majority of consumers in the State.

-- Regional power reliability will be significantly improved.

-- Generation resources, including future development, will be more diversified.

-- Economic development opportunities, including jobs, will be substantially enhanced.

-- Regional cooperation and coordination will be improved, as already evidenced through the establishment of the Railbelt Energy Council and the Railbelt energy coalition.

BRADLEY LAKE

The major benefit of the Bradley Lake project is the assurance of a stable, long-term supply of low-cost power, to be shared throughout the Railbelt utilizing the proposed intertie system. Because of higher capital costs, hydroelectric power is initially more expensive than that from fossil fuel plants. However, Bradley Lake energy is expected to become cheaper than the least-cost alternative of natural gas within the first five to seven years of Bradley's operation. The real payoff is that hydroelectric projects like Bradley Lake will last up to 100 years, compared to 20 or 30 years for gas turbines and other fossil-fuel generation facilities.

It is very important to remember that Bradley Lake will be more than an additional power source for the Railbelt. It will also be replacement power, because many of the region's existing gas-fired generation units will be wearing out in the early and mid-1990s.

The current plan, agreed to by all seven Railbelt utilities, is for the State and those utilities -- through long-term power sales agreements -- to split the cost of the project. Under the current $350 million cost estimate, the State's contribution would be $175 million, which is $43 million less than a previously agreed-to state equity share of $218 million. Should the cost of Bradley drop further, as many expect it will, the State's contribution would be reduced proportionately.

Of the $175 million from the State, $118 million already has been committed to project. The Governor has introduced legislation -- S.B. 159 and H.B. 165 -- to appropriate an additional $50 million from the Railbelt Energy Fund, to replace $50 million previously approved from the general fund but later rescinded. With the $118 million, the $50 million will bring the State's Bradley Lake contribution to $168 million, or within $7 million of the currently proposed $175 million. It is expected that the final $7 million will be appropriated by the current Legislature for fiscal 1988. Approximately $50 million already has been spent on the project, much of it for site preparation and support facilities.

THE INTERTIES

Construction has not yet begun on the interties, but studies are well under way. An economic analysis on both the southern and northern interties has been completed. So has a preliminary engineering feasibility study on the southern intertie, with the final report due in the very near future. An engineering feasibility study on the northern intertie is in progress, with a final report due in early May. It is important that environmental work commence this year so the transmission system can be in place when the Bradley Lake project comes on line, or as soon afterward as possible.

The Railbelt intertie system has a number of benefits, some quantifiable and some not easily quantifiable but nonetheless important. Here are some of them, as listed in the economic analysis:

Economy power interchanges -- The interties will permit the displacement of higher-cost generation in one area of the Railbelt with the lowest-cost generation from any other area. This will produce substantial savings for consumers.

Sharing of generation reserves -- The interties will allow one or more utilities to forego building or maintaining the amount of reserve generation capacity that would otherwise be necessary. Instead, those utilities could rely on reserves available elsewhere in the interconnected system.

Siting flexibility for new generation plants -- The interties will provide much greater flexibility in siting new generation plants within the Railbelt wherever the costs of operation -- including, importantly, fuel costs -- are the lowest.

Improved system reliability -- The interties will greatly improve electric system reliability throughout the Railbelt. For the first time, every Railbelt utility will have access to enough power from other systems to cope with any emergency or maintenance requirement. This will translate into fewer and briefer outages.

Increased system efficiency -- Transmission losses of electric energy are reduced in higher voltage circuits, such as the interties. It is estimated that line losses between Anchorage and the lower Kenai Peninsula will be reduced by 80 percent, while losses between Anchorage and Fairbanks will be reduced by 60 percent. Transmission loss reductions of this magnitude will result in many thousands of dollars in savings.

Increased utility coordination -- By virtue of its existence, a strong regional transmission grid will foster improved coordination and cooperation among Railbelt utilities. This will lead to increased participation in future generation and other power projects, with attendant sharing of costs and savings.

Distribution of Bradley Lake benefits -- The interties will enable all seven Railbelt utilities to directly participate in the Bradley Lake project, thereby spreading the costs and the benefits over a much wider base. With the limited existing transmission facilities, only Homer Electric Association and Chugach Electric Association could directly access Bradley Lake power.

Enhanced competition among fuel suppliers -- A major benefit of the interties is that they will improve access by all seven Railbelt utilities to a variety of generation fuel sources throughout the region. For example, power generation using cheaper wellhead natural gas on the Kenai Peninsula is presently constrained by a limitation in transmission capacity. With the interties, each utility will have a broader range of energy supply alternatives, and the utilities' bargaining positions with respect to potential fuel suppliers will be strengthened.

Another very important general benefit of the interties is that they will facilitate economic development and commerce, the results of which will be felt even beyond the Railbelt. In this respect, the interties are analogous to a highway, whose contribution to economic development and commerce is easily understood yet difficult to model. Where a highway carries motor vehicles, the interties will carry an equally essential commodity -- electric energy. Like good roads, a good electric transmission system is essential to a region's development.

SUMMARY

The program to complete the Bradley Lake project and the Railbelt interties is sound. The projects will benefit the majority of Alaska's consumers, and there is unprecedented support from a broad spectrum of interests, including every electric utility in the region as well as labor, business and local government.

Both the Bradley Lake project and the interties are bona fide public works projects, and they will pay long-term dividends. The Railbelt's power supply network will be strengthened in a number of ways, including reliability and lower-cost generation in the future. The regional and statewide economies -- including the job sector -- will be stimulated during construction and for many years to come.

While there inevitably is disagreement over how best to use public funds, especially during times when revenues are less plentiful, there is a demonstrable need for the Bradley Lake project and the intertie system. This program fulfills a high public purpose.

:rbprog

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

March 24, 1987

MEMORANDUM

TO: Representative Sam Cotten

FROM: Ginny Fay and Gretchen Keiser
Legislative Analysts

RE: **Railbelt Energy Analysis**
Research Request 87.114 (Supplemental Information)

This memorandum clarifies our Bradley Lake feasibility analysis and briefly addresses a number of questions raised during yesterday's briefing on Railbelt energy issues.

BRADLEY LAKE FEASIBILITY ANALYSIS

The net savings calculations in our March 18, 1987 memorandum correctly compare the annual production of 369 gigawatt hours (gwh) from Bradley Lake (operating at an annual effective capacity of about 42 megawatts) with 369 gwh annual production from a 87 megawatt (MW) gas plant (operating at an equivalent effective capacity of roughly 41 MW). In other words, the model adjusts the gas plant output to match the projected power production from Bradley Lake.

It could be argued that a 40 MW gas turbine operating at full capacity could provide roughly the equivalent amount of energy as a larger turbine operating at 47 percent capacity. If we substitute a smaller gas turbine for the gas generation alternative under our scenario III (Bradley Lake constructed as scheduled compared with gas plant in operation in 1998), the Bradley Lake net savings decline from $36 million to $3 million (see Attachment A). However, we do not believe that installation of a 40 MW gas turbine in the late 1990s is a realistic alternative because it would be insufficient to meet projected Railbelt demand after about 2002. In fact, installation of a 87 MW gas plant in the late 1990s would also be insufficient to meet projected Railbelt energy demand beyond 2002 (see Attachment B).

Our demand forecast suggests that Bradley Lake power is unnecessary until the late 1990s. At that time, Bradley Lake power would provide sufficient power to postpone the installation of additional generation facilities for roughly five years. To reiterate a point made in our previous memorandum, our analysis answers the question asked: Bradley Lake will probably produce an increment of energy production more cheaply than a gas alternative over the 50-year period of analysis. We have not, however, answered what we believe to be the more appropriate question of "what is the least cost means of meeting the projected Railbelt demand for electrical power?" Addressing this question is more likely to ensure lower power rates for the Railbelt electric consumers.

CONTRACT TERMINATION AND SITE RESTORATION COSTS IF BRADLEY LAKE IS CANCELLED

If the Bradley Lake project were cancelled, approximately $30 million in termination and site restoration costs would be incurred. The question raised during the briefing was whether these costs should be attributed to Bradley Lake or the gas generation alternative in the feasibility analysis. We believe (and our analysis assumes) that the termination and site restoration costs should be calculated as an expense of the gas alternative because these costs would be incurred only if the decision were made to proceed with the gas alternative rather than complete Bradley Lake. On the other hand, if the State completes Bradley Lake, these costs would not be incurred.

THE FEASIBILITY OF THE PROPOSED INTERTIES

A number of questions were raised during the briefing regarding the Kenai-Anchorage and Anchorage-Fairbanks interties--specifically with respect to the proposed coupling of the Bradley Lake project with State funding for the construction and/or upgrade of these interties. While we acknowledge the importance of a review and analysis of the proposed interties, we would like to point out that our present analysis was directed toward answering the question of which alternative (Bradley Lake or a gas turbine) provides power less expensively over a 50-year period of analysis. We are now examining the intertie proposals as part of this series of memorandums we are preparing on Railbelt energy issues. We intend to integrate transmission requirements into our overall analysis of Bradley Lake and the gas generation alternative.

OTHER ISSUES

You requested that we examine two additional issues which are pertinent to the legislature's consideration of Railbelt energy projects. The issues were:

- cost estimates for site restoration which would be required by the FERC if Bradley Lake were terminated; and
- the long-term availability of natural gas in Cook Inlet for gas-fired power generation.

We will provide information regarding these issues shortly in a subsequent memorandum.

* * *

Please contact us if you have any questions.

ATTACHMENT A

TABLE A.1 DELAY OF GAS GENERATION ALTERNATIVE/WITH INSTALLATION OF A 40 MW GAS TURBINE
BRADLEY LAKE NET SAVINGS ANALYSIS

ANALYSIS PARAMETERS		YEAR	CAPITAL COST ($86 MLN)	DEBT SERVICE ($86 MLN)	FIXED O&M ($86 MLN)	VARIABLE O&M ($86 MLN)	FUEL COST ($86 MLN)	TOTAL COST ($86 MLN)	REAL RATE (C/KWH)	REAL WELLHEAD GAS PRICE ($86/MMBTU)	BRADLEY O&M ($86 MLN)	BRADLEY DS ($86 MLN)	TOTAL BRADLEY ($86 MLN)
Cash Flow for Base		2016		1.0	0.5	0.5	12.3	14.2	3.9	2.90	2.0	6.7	8.7
Construction Cost:		2017		0.9	0.5	0.5	12.6	14.4	3.9	2.96	2.0	6.4	8.4
1987	0%	2018		0.9	0.5	0.5	12.8	14.7	4.0	3.02	2.0	6.1	8.1
1988	0%	2019		0.8	0.5	0.5	13.1	14.9	4.0	3.08	2.0	5.9	7.9
1989	0%	2020		0.8	0.5	0.5	13.3	15.1	4.1	3.14	2.0	5.6	7.6
1990	0%	2021		0.8	0.5	0.5	13.6	15.3	4.2	3.20	2.0		2.0
1991	0%	2022		0.7	0.5	0.5	13.9	15.6	4.2	3.26	2.0		2.0
1992	0%	2023		0.7	0.5	0.5	14.1	15.8	4.3	3.33	2.0		2.0
1993	0%	2024		0.7	0.5	0.5	14.4	16.1	4.4	3.40	2.0		2.0
1994	0%	2025		0.6	0.5	0.5	14.7	16.3	4.4	3.46	2.0		2.0
1995	0%	2026		0.6	0.5	0.5	15.0	16.6	4.5	3.53	2.0		2.0
1996	50%	2027		0.6	0.5	0.5	15.3	16.9	4.6	3.60	2.0		2.0
1997	50%	2028		0.6	0.5	0.5	15.6	17.1	4.6	3.68	2.0		2.0
		2029		0.5	0.5	0.5	15.9	17.4	4.7	3.75	2.0		2.0
Load Factor:	100%	2030		0.5	0.5	0.5	16.2	17.7	4.8	3.82	2.0		2.0
Annual Energy (gwh):	369.2	2031		0.5	0.5	0.5	16.6	18.0	4.9	3.90	2.0		2.0
Transmission Cost		2032		0.5	0.5	0.5	16.9	18.3	5.0	3.98	2.0		2.0
($1986 Millions):	$0.0	2033		0.5	0.5	0.5	17.2	18.7	5.1	4.06	2.0		2.0
		2034		0.4	0.5	0.5	17.6	19.0	5.1	4.14	2.0		2.0
BRADLEY LAKE		2035		0.4	0.5	0.5	17.9	19.3	5.2	4.22	2.0		2.0
Cost to Complete:	$283.0	2036		0.4	0.5	0.5	18.3	19.7	5.3	4.31	2.0		2.0
Debt Service (30 yr):	$25.1	2037		0.4	0.5	0.5	18.7	20.0	5.4	4.39	2.0		2.0
		2038		0.4	0.5	0.5	19.0	20.4	5.5	4.48	2.0		2.0
NP COST GAS	$217.6	2039		0.4	0.5	0.5	19.4	20.7	5.6	4.57	2.0		2.0
+ term & site restoration	$30.0	2040		0.3	0.5	0.5	19.8	21.1	5.7	4.66	2.0		2.0
NP COST GAS	$247.6												
NP COST BRADLEY	$244.6												
NET SAVINGS BRADLEY	$3.0												

NOTE: The analysis is based on a model originally developed by the Alaska Power Authority.

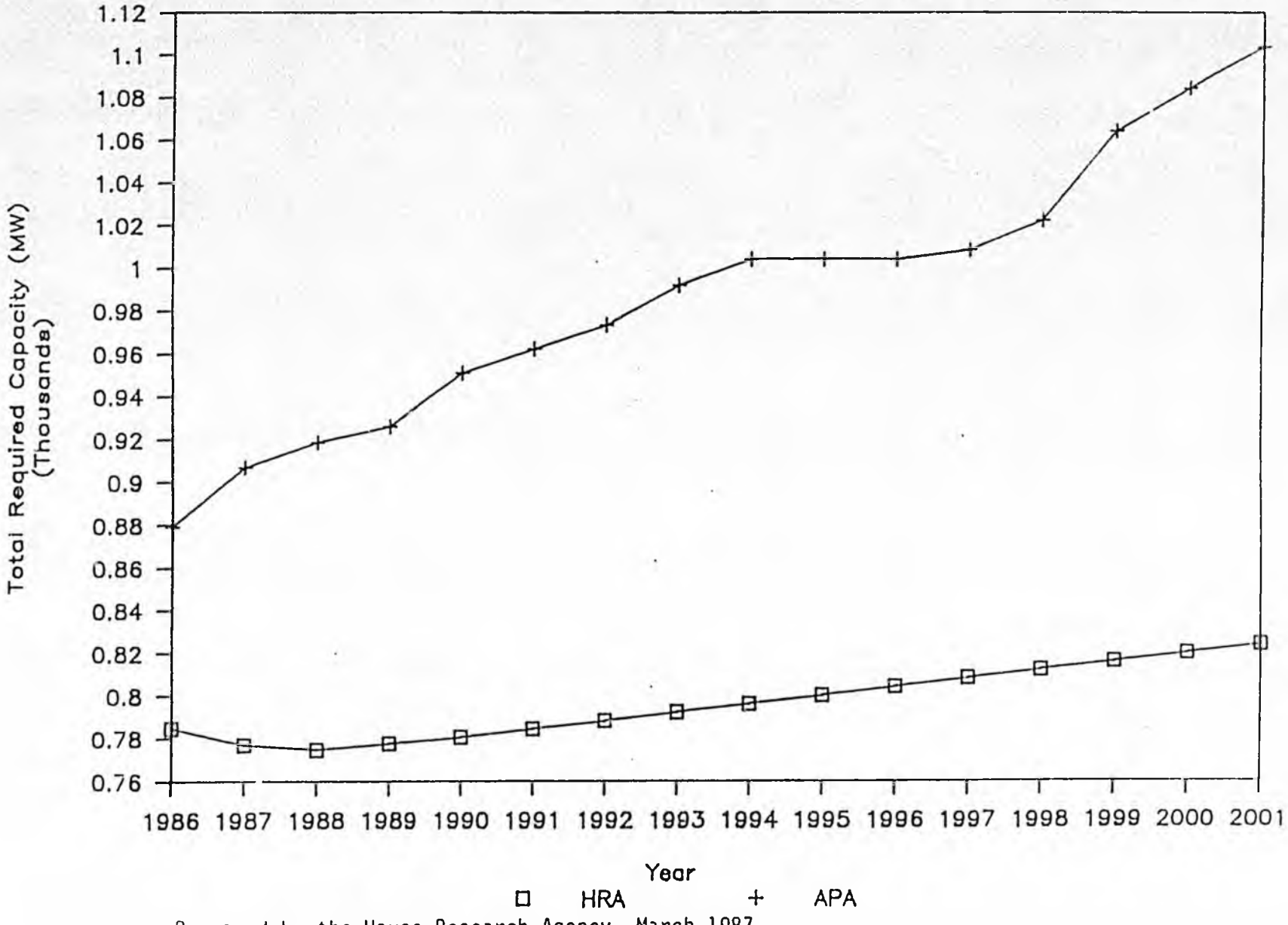
Prepared by the House Research Agency, March 1987 (40MWgas; 870109-02).

TABLE A.1 DELAY OF GAS GENERATION ALTERNATIVE/WITH INSTALLATION OF A 40 MW GAS TURBINE
BRADLEY LAKE NET SAVINGS ANALYSIS

ANALYSIS PARAMETERS		YEAR	CAPITAL COST ($86 MLN)	DEBT SERVICE ($86 MLN)	FIXED O&M ($86 MLN)	VARIABLE O&M ($86 MLN)	FUEL COST ($86 MLN)	TOTAL COST ($86 MLN)	REAL RATE (C/KWH)	REAL WELLHEAD GAS PRICE ($86/MMBTU)	BRADLEY O&M ($86 MLN)	BRADLEY DS ($86 MLN)	TOTAL BRADLEY ($86 MLN)
Base Capital Cost Excluding IDC ($1986/net kw):	$400												
		1987	0.0							$1.63			
Capacity (net kw):	40,000	1988	0.0							1.66			
		1989	0.0							1.70			
Construction Period (years):	2	1990	0.0							1.73			
Total Bonds:	$30.8	1991	0.0							1.77	2.0	20.2	22.2
Bond Term (years):	20	1992	0.0							1.80	2.0	19.3	21.3
Long-Term Interest Rate:	10.0%	1993	0.0							1.84	2.0	18.5	20.5
Bond Payment (1997$):	$3.6	1994	0.0							1.87	2.0	17.7	19.7
		1995	0.0							1.91	2.0	16.9	18.9
Inflation Rate:	4.5%	1996	8.0							1.95	2.0	16.2	18.2
Reinvest Rate:	6.0%	1997	8.0	2.2				2.2	0.6	1.99	2.0	15.5	17.5
Discount Rate:	3.5%	1998		2.1	0.5	0.5	8.6	11.7	3.2	2.03	2.0	14.8	16.8
		1999		2.0	0.5	0.5	8.8	11.8	3.2	2.07	2.0	14.2	16.2
		2000		2.0	0.5	0.5	9.0	11.9	3.2	2.11	2.0	13.6	15.6
Fixed O&M Cost ($1986/kw/yr):	$11.25	2001		1.9	0.5	0.5	9.1	12.0	3.2	2.15	2.0	13.0	15.0
		2002		1.8	0.5	0.5	9.3	12.1	3.3	2.20	2.0	12.4	14.4
		2003		1.7	0.5	0.5	9.5	12.2	3.3	2.24	2.0	11.9	13.9
Variable O&M Cost ($1986/kwh):	$0.0014	2004		1.6	0.5	0.5	9.7	12.3	3.3	2.29	2.0	11.4	13.4
		2005		1.6	0.5	0.5	9.9	12.4	3.4	2.33	2.0	10.9	12.9
New Turbine Heat Rate		2006		1.5	0.5	0.5	10.1	12.6	3.4	2.38	2.0	10.4	12.4
(BTU/kwh):	11,500	2007		1.4	0.5	0.5	10.3	12.7	3.4	2.43	2.0	10.0	12.0
		2008		1.4	0.5	0.5	10.5	12.8	3.5	2.47	2.0	9.5	11.5
		2009		1.3	0.5	0.5	10.7	13.0	3.5	2.52	2.0	9.1	11.1
Wellhead Gas Price		2010		1.3	0.5	0.5	10.9	13.2	3.6	2.57	2.0	8.7	10.7
($1986/MMBTU):	$1.60	2011		1.2	0.5	0.5	11.1	13.3	3.6	2.62	2.0	8.4	10.4
Gas Delivery ($86):	$0.00	2012		1.2	0.5	0.5	11.4	13.5	3.7	2.68	2.0	8.0	10.0
Real Wellhead Price		2013		1.1	0.5	0.5	11.6	13.7	3.7	2.73	2.0	7.7	9.7
Escalation Rate:	2.0%	2014		1.1	0.5	0.5	11.8	13.8	3.8	2.79	2.0	7.3	9.3
		2015		1.0	0.5	0.5	12.1	14.0	3.8	2.84	2.0	7.0	9.0

ATTACHMENT B

RAILBELT ELECTRICAL DEMAND FORECASTS



Prepared by the House Research Agency, March 1987.