

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
5978 HOUSE RESOURCES

382

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: Rent & Royalty Payments for Mining Claims  
Sponsor: Rules Committee  
Requestor: Governor

Agency Affected: DNR  
BRU: Mining Management Management/Administration  
Components: Property Management Admin. Services

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		35,900	37,000	38,200	39,400	40,800
TRAVEL		0	0	0	0	0
CONTRACTUAL		1,500	1,500	1,500	1,500	1,500
SUPPLIES		500	500	500	500	500
EQUIPMENT		4,000	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>41,900</b>	<b>39,000</b>	<b>40,200</b>	<b>41,400</b>	<b>42,800</b>
<b>CAPITAL</b>		<b>240,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>		<b>750,000</b>	<b>750,000</b>	<b>770,000</b>	<b>770,000</b>	<b>800,000</b>

**FUNDING:** (Thousands of Dollars)

GENERAL FUND		281,900	39,000	40,200	41,400	42,800
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

See attached sheet

Prepared by: Gerard Gallagher Phone: 762-2165  
Division: Mining Date: 1/6/89  
Approved by Commissioner: Lennie Gorsuch Date: 1-6-89  
Agency: DNR

**Distribution (by preparer):**

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Assumptions: As a result of the May, 1987 Alaska Supreme Court opinion, the State's mining laws will need to be amended to require the payment of a cash rent and production royalty. There are currently over 40,000 state mining claims and 200 mining operations on state land. Each claim will be assessed a rental of \$0.50 per acre (\$20 per claim) and each operation a minimum royalty of \$200 or 1% of the net profits, whichever is greater. DNR estimates revenue derived from rents and royalty will be \$750,000 in FY 90 and increase to \$800,000 by FY 94. Rental payments should account for \$650,000 and the royalty payments are estimated to be \$100,000 initially.

Program Summary: This expenditure is necessary to complete the additional work load of collecting rent and royalty payments and maintaining both the current mining records system and the state's revenue and billing system.

Positions: A new "Accounting Technician I" position is needed in the Mining and Administration BRU. This position will maintain accounts in the LAS's Revenue and Billing System, audit billing registers, and prepare worksheets and reports as necessary to assure proper accounting and coding of these funds.

Other Expenditures: A one-time capital appropriation of \$240,000 is necessary to purchase a new computer system in the "Mining Management" BRU. This new system will allow the Division of Mining to handle the additional workload of rent and royalty payment tracking and lease status verification without additional staff.

General fund revenues generated under this proposal will exceed expenditures in every year. During FY 90, a general fund contribution of \$468,000 after all expenses is estimated. Beginning in FY 91, general fund contribution of at least \$700,000 annually are expected after operating expenses are deducted.

Position Title <b>Accounting Technician I</b>		No. of Positions <b>1</b>	Range/Step <b>12A</b>	Barg. Unit <b>GGU</b>
Time Status <b>PFT</b>	Staff Months <b>12</b>	Location <b>Anchorage</b>		Election District
Type of Expenditure		Justification		
		The position will receive balance and code funds over the counter and by mail for payments received for the Division of Mining leases and claims. The position will determine the proper customer account, the Department handles approximately 40,000 mining leases belonging to 2500 to 3000 individual customers. The proper coding will be impacted by number of properties owned by payee. The position will do acct functions, plus provide customer information, auditing billing register to to insure proper billing and researching address changes.		
Amount				
1	2	3		
Salary	24,900			
Benefits	11,000			
Premium Pay				
Other				
Total Personal Services		35,900		
Travel				
Contractual		1,500		
Commodities		500		
Equipment		4,000		
Other				
Total Cost		41,900		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	41,900		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

**Request For  
New Position**

Agency NATURAL RESOURCES  
 BRU MANAGEMENT & ADMINISTRATION  
 Component Administrative Services

**FY 90**

Page      of       
 Revised Date     

HB 99  
 HOUSE 1/20/89

No. 1

De

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: HB 99  
PUBLISH DATE: HOUSE 1/20/89

FISCAL NOTE

REQUEST:

Revision Date: January 13, 1989  
Title: Rent and Royalties for  
State Mining Claims  
Sponsor: Rules Committee  
Requestor: Governor

Agency Afferted: Revenue  
BRU: Income and Excise Audit Division  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel *Steven E. Kettel* Phone: (907) 465-2320  
Division: Income and Excise Audit Date: January 13, 1989  
Approved by Commissioner: Hugh Malone *Hugh Malone FOR* Date: January 13, 1989  
Agency: Revenue

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Prepared by: Steven E. Kettel  
Income and Excise Audit Division  
Department of Revenue  
January 13, 1989

### Fiscal Note Analysis

Legislative action is necessary to cure a defect in the state's mining laws which do not comply with Section 6(1) of the Statehood Act. The central problem - - Alaska's mining leasing system does not require the payment of cash rent or royalties.

This legislation introduces a system of rental and royalty charges against those miners with claims on state land. There will be no fiscal impact upon the Department of Revenue. DNR has prepared a fiscal note showing the anticipated revenues this proposal will generate.



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

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April 22, 1988

MEMORANDUM

TO:

FROM: Gretchen Keiser  
Legislative Analyst

RE: Taxation of Hardrock Mining Operations  
Research Request 88.230

You requested information about local government taxation of hardrock mining operations nationwide. Specifically, you asked us to address the following issues:

1) Local government severance tax on hardrock mining operations.

- How many states allow political subdivisions to impose a severance tax (or its equivalent)? How many states give sole authority to impose a severance tax to their local governments?
- What are the basic formulas used to calculate the amount of severance tax? What are the rates imposed by counties or cities?
- Is the severance tax imposed on the value of the ore when it is severed, or on the ore concentrate? How is "value" established? Is value based on gross or net value?
- Are mining companies which are subject to severance tax exempt from other state or local taxes or fees (e.g., property taxes, impact taxes, user fees, income taxes, or sales taxes)?

2) Local impact assistance and hardrock mining operations.

- How many jurisdictions impose an impact tax in addition to severance taxes?

- In jurisdictions imposing an impact tax prior to production, can the impact tax be deducted from future severance tax payments?
- 3) What mechanisms, if any, do local governments use to accommodate fluctuations in the profitability of mining from year to year?
  - 4) What taxes other than severance taxes are levied to assess the economic rent implicit in hardrock mining?
  - 5) What is the total, cumulative tax burden imposed on hardrock mining operations in specific jurisdictions in the country?
  - 6) Are there provisions which allow the mining industry to deduct state and local taxes from federal income taxes?
  - 7) What is the Canadian taxation on hardrock mining operations? Does it differ greatly from taxation in the United States?

In order to address many of your questions, this memorandum first presents a general overview of taxes typically imposed on hardrock mining operations in the United States. Much of this information summarizes a 1986 American Bar Association publication, State and Local Taxation of Natural Resources in the Federal System, by Walter Hellerstein. The next section briefly discusses Alaska's current taxation of mineral operations. We contacted several national organizations and obtained general information regarding local taxation of mining operations but were unable to locate a detailed compilation of local government taxation nationwide.<sup>1</sup> We subsequently contacted state associations of counties in several western states in order to obtain more information about local taxation of mines and assistance to communities affected by mining operations. This information is summarized in the third section of this memorandum. The final section briefly discusses Canadian taxation of hardrock mining operations.

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<sup>1</sup>Organizations contacted include: National Conference of State Legislatures, Council of State Governments, American Mining Congress, U.S. Bureau of Mines, National Association of Tax Administrators, Rocky Mountain Mineral Law Foundation, U.S. Bureau of the Census, U.S. Advisory Commission on Intergovernmental Relations, National Municipal League, and the National Association of Counties.

## TAXATION OF HARDROCK MINING IN THE U.S.: AN OVERVIEW

Generally, taxes levied on hardrock mining companies engaged in the extraction of metal minerals fall into one of three categories: property taxes, production (severance) taxes, and other nonspecific taxes (e.g., corporate income or sales taxes).<sup>2</sup> Most states take a broad approach to the taxation of metal mining and currently impose a combination of the various taxes.

**Property Tax.** The oldest form of (mineral) taxation in the U.S. is the property tax. The tax was the basic source of revenue for both state and local governments until the late 1800s when states gradually developed other sources of revenue, leaving the taxation of mineral property largely to local governments. There are two notable exceptions to this generalization--California and Pennsylvania--which continue to collect the bulk of their mineral tax revenues under a state property tax system.

In most states, a producing mining property is assessed at its fair market value which is commonly determined on the basis of the income produced by the mine (although additional "comparable sales" and "cost to reproduce the property" methods are also employed).<sup>3</sup> In contrast, some western states base their property tax on a gross or net proceeds valuation of mining operations.<sup>4</sup> The valuation of nonproducing mineral property, if it is assessed and taxed at all, is often based on the comparable sales method since undeveloped mineral properties change hands relatively frequently. State agencies in some states provide valuation guidelines for local assessors to use on an informal or mandatory basis. However, in several western mining states, the value of mining properties is determined by a centralized state agency and then reported to county assessors for application of local millage rates.<sup>5</sup>

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<sup>2</sup>"Metals" or metalliferous minerals generally refer to the class of minerals which includes gold, silver, zinc, lead, etc. Taxation of metalliferous minerals is commonly treated separate from taxation of energy resources such as oil, natural gas, oil shale, and coal.

<sup>3</sup>You requested information regarding the formulas employed in various tax systems. Attachment A provides pertinent sections of the American Bar Association's State and Local Taxation of Natural Resources which specify in considerable detail the different methodologies employed for valuation of resource properties.

<sup>4</sup>Colorado, for example, values producing mines at 25 percent of their gross proceeds.

<sup>5</sup>Typically, a state department of revenue or taxation annually assesses the value of mining operations in Utah, Wyoming, New Mexico, Nevada, Montana, Idaho, and Arizona.

The determination of property value generally makes property taxes difficult and costly to administer. Furthermore, property taxation may cause a mine operator to accelerate the resource recovery in order to reduce the aggregate property tax bill over the life of the mine. A property tax based on the value of remaining reserves generally creates an incentive for rapid exploitation of the resource. The major advantage property taxes provide is the generation of revenues as the mine is developed and costs of public services are incurred. A property tax is also a more stable source of revenue than production or income taxes because it is less sensitive to fluctuations in mineral prices and business cycles.

**Production Taxes.** States began to impose special taxes on the production of mineral (and other nonrenewable) resources in the late 1800s. Such levies are frequently called production or severance taxes, but are also labeled as privilege, license, occupation, excise and conservation taxes. These taxes have been commonly justified on the basis of 1) the exhaustibility of the mineral resources, 2) the natural heritage these resources represent, and 3) the extraordinary costs imposed on state and local governments. To many, special mining taxes represent compensation for the one time extraction which irretrievably deprives the state of its wealth. A second argument maintains that the mineral resources constitute the natural heritage of the people and, consequently, the state is justified in imposing a (higher) tax than on other forms of property. Special mineral taxes have also been justified on the basis of the costs imposed on governments by the resource extraction activity. The costs identified include out-of-pocket expenditures for economic and social infrastructure as well as the intangible costs of environmental degradation and boom town social problems. In most states that impose production taxes, these are levied in addition to property taxes and do not exempt mining companies from other taxes by virtue of their payment of severance taxes.

The production, or severance, tax is imposed upon the activity of severing the mineral resources, regardless of land or subsurface mineral ownership.<sup>6</sup> Thus, severance taxes can be levied on all mineral extraction occurring within a state's borders. In 1985, state severance

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<sup>6</sup>In contrast, states also obtain a share of the wealth embodied in subsurface minerals they own and lease to mining companies through the imposition of royalties.

tax revenues nationwide totalled \$7.5 billion from the following resources: oil and gas (89 percent), coal (8 percent) and other nonfuel minerals (3 percent).

In 1987, 25 states imposed severance taxes on "hard ore" minerals (excluding oil, gas and coal).<sup>8</sup> The taxes are levied on the mine output, commonly as a percentage of either the gross or net value. In some cases--particularly with the extraction of minerals of relatively low value--taxes are levied as a flat rate per unit of production. Depending upon a particular state's production tax, the levy may occur at the mine mouth or following initial ore processing. Nevertheless, disputes have arisen over the proper measure of value or volume if the tax liability is attached at the time of severance when the ore might not be weighed or valued until after initial processing.

We did not identify any states which allow local governments to impose a severance tax on the extraction of metal minerals. However, pursuant to state statute, some counties in Tennessee levy severance taxes on minerals such as limestone, sand, gravel and phosphate. The two principal coal-producing counties in Maryland (i.e., Allegany and Garrett) are required to levy a severance tax on surface-mined coal in lieu of any personal property taxes on these mining operations. Similarly, these two counties impose a natural gas severance tax. In Virginia, counties and cities are authorized to levy severance taxes on coal and natural gas extraction activities, not to exceed one percent of the gross receipts from the sale of coal or natural gas severed. Most coal-producing counties in Virginia levy severance taxes under this provision.

Advantages of production taxes include the simplicity of the tax and the ease of administration by a state, particularly in comparison with other forms of taxation. Another advantage is the equitable treatment of mines producing different qualities of minerals in the case of a tax based on a percentage of the value of the mine product. From an industry perspective, the disadvantages of a severance tax are that: 1) it is often based on the quantity or value of mine production without regard to operating costs or profitability; and 2) it can lead to "high grading" or the selective

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<sup>7</sup>Advisory Commission on Intergovernmental Relations, Measuring State Fiscal Capacity, 1987 Edition, December 1987 pp. 99 - 101.

<sup>8</sup>Martha Fabricius, National Conference of State Legislatures, Fiscal Affairs Division, personal communication, April 14, 1988.

"creaming" of high quality deposits. Flat rate severance taxes are cited for their tendency to discourage development of higher cost mines and lower grade ores. Another deficiency of severance taxes is their failure to generate revenues (needed for additional public services) until the mine comes into production.

**Other Nonspecific Taxes.** State and local governments also impose other general taxes, such as income and sales taxes, which affect any company--including mine operators--conducting business within the state or local jurisdiction. All states except South Dakota, Texas, Washington, and Wyoming impose a corporate income tax, with rates ranging from 1 to 12 percent of net income in 1987.<sup>9</sup> Most states tend to follow the rules applicable to mineral resource industries under the federal income tax. With the possible exception of some coal-producing counties in Pennsylvania, local government income taxes--in the ten states where they occur--are unlikely to generate significant revenues from mining operations.

Forty-five states (excluding New Hampshire, Delaware, Montana, Oregon and Alaska) impose a general sales tax, with a national median rate of five percent in 1987.<sup>10</sup> Some states, such as Texas and Washington, have relatively high rates of 6 and 6.5 percent, respectively, and rely quite heavily on general sales tax revenues because they do not have corporate income taxes. Counties and municipalities in 31 states also imposed general sales taxes in 1987--typically in the one to three percent range. Cumulative state-local sales tax rates generally range from four to eight percent. The western mining states (Arizona, New Mexico, Colorado, Idaho, Montana, Utah, Wyoming and Nevada) have cumulative state-local sales tax rates generally in the five to seven percent range, with the exception of Montana which has no state or local general sales taxes. In most states, corporate activities related to mineral resources are generally not singled out for special treatment under state sales taxes.

In addition, mining companies pay federal income taxes. In general, payments for state and local taxes are considered costs of doing business and are deductible expenditures. Several changes in the tax code under the Tax Reform Act of 1986 have affected most industries, including

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<sup>9</sup>Advisory Commission on Intergovernmental Relations, Significant Features of Fiscal Federalism 1988 Edition, December 1987, pp. 48 - 53.

<sup>10</sup>Op. cit., pp. 54 - 61.

mining.<sup>11</sup> The repeal of capital gains treatment of income generally raises the tax rate on capital, while the repeal of the investment tax credit increases the cost of acquiring capital. These changes which tend to increase the tax burden of business are somewhat offset by a reduction in the corporate tax rates (i.e., the maximum rate declined from 46 to 34 percent). The new tax law retained an industry-favored provision which allows expensing of mining exploration and development costs which allows deduction of the cost in the year incurred.

**General Comments.** Given the diversity of taxes imposed--by type and rate--it is difficult to generalize about mineral taxation nationwide. The particular set of mineral taxes in each state was developed under unique historical, economic and political circumstances. The diversity of taxes also prevents an easy state-by-state comparison of the cumulative tax burden imposed on mining operations.<sup>12</sup> Taxation patterns, to the extent they exist, tend to be regional since states often look to their neighbors for guidance in establishing taxes. For example, several Rocky Mountain states employ a proceeds-based method for valuation under their property tax statutes. These states also have the tendency to impose mineral-specific production taxes.

Taxes which allow for the deduction of the various costs of operating a mine generally accommodate, to some extent, the fluctuations in the profitability of the mining operation. To our knowledge, only four states (Nevada, Idaho, New Mexico and Utah) employ a net proceeds or net profits method in the valuation of taxable mine property. Similarly, only a handful of states (Arizona, Idaho, Alaska, Wisconsin and Minnesota) base their production taxes on a percentage of net value or net income from mineral extraction. In these cases, a higher cost mining operation may pay lower taxes than a lower cost operation. Other states which base their severance tax on the basis of gross value also accommodate varying profits to the extent that the value (or price) of the mineral dictates a mining operation's profitability. State corporate income taxes are based on net income and therefore generally address the profitability of a mining operation.

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<sup>11</sup>U.S. General Accounting Office, Selected Tax Provisions Affecting the Hard Minerals and Timber Industries, June 1987, p. 1.

<sup>12</sup>We were unable to locate a national or regional study comparing the cumulative tax burden on mining operations.

Economists refer to the excess of revenues over the costs of mining and processing, where costs include a profit sufficient to attract capital to a project, as the economic rent. The U.S. Supreme Court decision upholding Montana's 30 percent severance tax on coal defined economic rent as the difference between the cost of production (including a reasonable profit) and the market price of the coal. The federal Windfall Profit Tax was enacted by Congress as a means to tax the economic rents accruing to oil companies when federal deregulation of oil prices resulted in significant price increases. The goal of taxing economic rent without unduly discouraging mining activity may be desirable, but considerable debate exists as how to identify such rent. Generally, states employ a production tax as the vehicle for taxing economic rent. In cases where mineral activity occurs on state lands, a higher royalty can be imposed on higher quality mineral deposits and provides another mechanism for capturing economic rent. On the other hand, local government property and sales taxes in general do not lend themselves to the capture of "excess profits" embodied in the theoretical concept of economic rent. With this overview of mineral taxation in the U.S., we now turn to a brief discussion of Alaska's taxation of mining operations.

#### MINERAL TAXATION IN ALASKA

Alaska currently imposes income taxes on mining corporations operating in the state via the Net Income Tax and the Mining License Tax. The (Corporate) Net Income Tax is derived from a corporation's federal taxable income. Income of less than \$90,000 is subject to the state's graduated tax rate to a maximum tax liability of \$4,500. If taxable income exceeds \$90,000, the tax is \$4,500 plus 9.4 percent of the taxable income over \$90,000. The resultant Alaska gross corporate tax is adjusted for education and targeted job credits as well as investment tax credit carryovers to yield the net income tax payable to the state.<sup>13</sup>

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<sup>13</sup>Alaska's special industrial incentive tax credit, enacted in 1984 and applicable to the first \$250 million in qualified investment for the mining of minerals, is no longer available. State corporate income tax generally follows the federal tax code, and investment tax credits were repealed under the Tax Reform Act of 1986.

In 1982, 54 tax returns from mining operations (with 19 reporting taxable income) generated about \$21,000 in state income tax revenues.<sup>14</sup> This represented one-tenth of one percent of the nonpetroleum corporate income tax revenues collected in 1982 (\$21.1 million). In FY 87, total nonpetroleum corporate income tax revenues were \$20.5 million.

The Mining License Tax is a net income tax which incorporates a graduated tax rate schedule up to a maximum liability of \$1,000 plus seven percent of the taxable income over \$100,000. Mining operations are exempt from this tax for the first three and one-half years after production commences. State revenues from the Mining License Tax totalled \$259,300 in FY 87 and is estimated at \$350,000 in FY 88--up due to increased shipments of Usibelli coal and use of sand and gravel in North Slope oil fields. The tax revenues have fluctuated around \$300,000 during the last few years, reflecting varying activity levels in the three major mineral categories: sand and gravel, gold and coal.

In 1982, the state considered the redesign of the tax structure for depletable resources. A Council on Economic Policy--composed of business, university and government leaders appointed by former Governor Hammond--suggested that reasonable rationales for nonrenewable resource taxation in Alaska were 1) compensation for the special costs of public services incurred by the state and 2) a sharing by the state of the surplus income (economic rent) derived from development of Alaska's mineral resources.<sup>15</sup> The Council concluded that the Mining License Tax appeared to be the appropriate form of mineral taxation in Alaska. The conclusion was based on findings that an income tax is more reasonable to administer than a property tax and does not impose an unreasonable burden on Alaska's nascent mineral industry such as a severance tax might. However, the Council questioned whether 1) the current level of taxation would generate sufficient revenues to cover the special costs incurred in the course of mineral resource development and 2) the current rate structure (with a maximum of seven percent for net income over \$100,000) allows the state to capture an appropriate share of the excess profits which would occur if unforeseen bonanzas were discovered.

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<sup>14</sup>1982 is the most recent year for which detailed nonpetroleum corporate tax revenue data are available from the Alaska Department of Revenue.

<sup>15</sup>State of Alaska Council on Economic Policy, Depletable Resource Taxation, December 1982, 28 pp.

A 1986 Alaska Attorney General opinion concludes that under current statutes, a borough may exercise the power to levy a severance tax on minerals (Attachment B). Under Alaska Statutes, home rule municipalities (i.e., Municipality of Anchorage, City and Borough of Juneau, North Slope Borough and City and Borough of Sitka) have all legislative powers not prohibited by law or charter, while general law municipalities (i.e., Bristol Bay Borough, Fairbanks North Star Borough, Haines Borough, Kenai Peninsula Borough, Ketchikan Gateway Borough, Kodiak Island Borough, Matanuska-Susitna Borough and Northwest Arctic Borough) have legislative powers conferred by law. Alaska Statute 29.35 grants general powers to all municipalities, including the power to levy taxes. Under AS 29.45, specific provisions allow for municipal property taxes and sales taxes (with certain limitations), but the statute is silent with regard to severance taxes. According to the Attorney General opinion, there is no other statute, including the Mining License Tax, which prohibits a municipality from levying a severance tax on minerals. In contrast, AS 43.55 levies the state severance tax on oil and gas production and prohibits municipalities from imposing a production tax on such activities.

#### LOCAL MINERAL TAXATION AND IMPACT ASSISTANCE IN SELECTED STATES

We contacted the state associations of counties in four western mining states (Colorado, Montana, Nevada and Utah) in order to obtain more detailed information regarding local taxation of and impact assistance from mining operations. The information is summarized below.

##### Local Mineral Taxation

Colorado. Producing metal mines are assessed at 25 percent of their gross proceeds for the preceding year. Nonproducing mineral property is valued the same way as nonmining property, but in practice, many local assessors follow the Colorado Department of Local Affairs' guidelines that recommend a minimum assessment of \$100/acre when usable market or income data are unavailable. Mining companies often appeal property assessments to the State Board of Appeals. State statute requires that counties impose a uniform millage rate on all taxable properties, and the millage rates imposed vary considerably across the state. Finally, Colorado allows mining companies a credit against their mineral severance tax (up to 50 percent of their liability) for all property taxes paid on producing mines.

According to Bill Grannell of Colorado Counties, Inc., most local revenues from mining operations comes from a sharing of the State Metallic Mineral Severance Tax. A tax rate of 2.25 percent is imposed on the gross income from mining, with an exemption for the first \$11 million of gross income. In 1987, counties received about \$20 million in shared state severance tax revenues (out of a total of about \$60 million) under a three-tiered allocation system which also disburses revenues to public schools and to a statewide trust fund.

Montana. The Department of Revenue, acting under statutory guidelines, assesses producing mines at three percent of their gross proceeds and then certifies these values to county assessors for inclusion in their tax rolls. The mineral content of nonproducing mines is excluded from the property tax base. State statute requires uniform mill levies on all taxable property. According to Gordon Morris of the Montana Association of Counties, there is no sharing of state severance of mineral severance tax revenues with local governments. On average, Montana counties are reliant on property taxes for roughly 95 percent of their revenues.

Nevada. Producing mines are taxed on the basis of their net proceeds, as determined by the Department of Taxation under detailed statutory guidelines. In addition, all patented mines and mining claims are subject to a minimum tax of \$500 (which is usually the actual assessment), unless \$100 in development work has been recently performed. After certifying the valuation, the state sends notices to the mining companies, which then have 30 days to make payments to the counties.

Nevada statutes impose a limitation of \$3.64 per \$1000 value on county property tax rates; currently no county is at that level of taxation. The state also places property and sales tax revenue base caps on local government and allows for annual adjustments for increases in the Consumer Price Index and new construction. As of July 1, 1987, the state removed mining tax revenues from under the caps which, in effect, allow counties to increase other property and sales taxes and collect significantly more revenue. According to Laurie Schlecker of the Nevada Association of Counties, mining operations have carried a large share of the local tax burden in the past and this change could shift more of the burden to others in the counties. Nevada does not impose a severance tax on mineral extraction.

Utah. The State Tax Commission assesses metal mines and mining at \$10/acre plus an amount equal to twice the average net annual proceeds for the preceding three years (or since the mine opened if less than three years). The state not only assesses mineral properties, but also limits millage rates at the local level. According to Mark Walsh, legislation for more localized control of the taxing of mineral properties is proposed almost every year and defeated under strong industry opposition.

Utah imposes a mining occupation tax on those engaged in the business of mining metal minerals in the state. A one percent tax is imposed on the gross value of the metals mined. The Utah Constitution disallow state imposition of a tax which is then shared with local governments. Thus, Utah counties do not receive a share of the mining occupation tax revenues.

#### Local Impact Assistance

In the four states contacted, local governments have various avenues for assistance in meeting the initial public service and infrastructure needs which may arise from the development of a new mine within their boundary. With respect to one of your questions, we did not identify any county that imposed an impact fee or tax, per se. Colorado statutes allow for 1) prepayment of local property taxes for use in capital improvements (e.g., roads, water, sewer, and schools), 2) a credit on corporate income tax equal to the value of local impact assistance contributions (of property or payments for public facilities) made prior to commencement of new or expanded mining operations, and 3) a sharing of state severance tax revenues with impacted counties.

Montana established a Hard-Rock Mining Impact program in 1981 to..."provide a system to assist local government units in meeting the initial financial impact of large-scale mineral development." Under the system, a mineral developer must submit to affected counties and a state Hard-Rock Mining Impact Board a plan which describes the economic impact their development will have on local government units. The mineral developer and the affected local governments shall assure that the plan specifies 1) the development timetable and population impacts, 2) the increased local government capital and operating costs as a result of the development, and 3) the financial and other assistance provided by the developer to meet the increased need for local services. Furthermore, the developer shall commit to pay all of the increased local capital and operating cost attributable to the mineral development through property tax prepayments, special educational impact bonds, or other funds.

The state Hard-Rock Mining Impact Board generally acts as the referee if objections or disputes arise between local governments and mineral developers. In addition, the board may award grants and loans from the hard-rock mining impact trust account to local governments affected by the permanent cessation of a mining operation or at least a 50 percent reduction in the full-time equivalent workforce. The funds are designed to pay for outstanding capital bonds, decrease unusually high property tax mill levies cause by the cessation or reduction, promote diversification of the economic base, or attract new industry to the affected area.

Two counties in Nevada require mineral developers to obtain a special use permit through their normal planning process. The developer can be required to build roads, water or sewer systems, schools, etc. According to Laurie Schlecker of the Nevada Association of Counties, impact assistance is not a major issue in Nevada because mining companies are generally cognizant of the impacts their operations may cause. Nevertheless, the Association is encouraging other Nevada counties to institute a special use permit process.

In Utah, impact assistance is generally negotiated between local governments and developers. According to Mark Walsh of the Utah Association of Counties, the usual avenue for assistance is through prepayment of property taxes by the developer.

#### MINERAL TAXATION IN CANADA

We contacted the British Columbia Ministry of Energy, Mines and Petroleum in order to address your question regarding the general nature of mineral taxation in Canada.<sup>16</sup> Canadian mining companies are subject to the federal Corporate Income Tax, which is a net income based tax with an effective rate of 27 percent. Mining companies are also subject to provincial corporate income taxes which are structured similarly to the federal income tax. The British Columbia corporate tax rate currently stands at 14 percent--reduced from 16 percent two years ago--and tends to be at the higher end of a fairly narrow range of corporate tax rates imposed by the various Canadian provinces.

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<sup>16</sup>Douglas Wren and Dwayne Anderson, Minerals Policy and Evaluation Division, B.C. Ministry of Energy, Mines and Petroleum, personal communications, April 19, 1988.

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The provinces also impose a Mineral Resource Tax, which is a profits-based tax calculated on a mine-by-mine basis (i.e., generally similar to some states' net proceeds taxes which are based on individual mining operations). The rates imposed under mineral resource taxes vary from about 5 percent (Quebec) to about 20 percent (Ontario), with B.C. currently at 15 percent (recently reduced from 17 percent).

Local governments in Canada impose property taxes on mining operations occurring within their jurisdiction. The provinces generally place limitations on local property taxation powers and require uniform levies--as is common in the U.S., British Columbia has instituted a new mining property tax assessment system effective in the next tax year. In response to difficulties with, and repeated court challenges to, market-based local assessments, the province is developing mandatory standards of valuation based on the cost of mines less depreciation. Provincial assessors will value mining properties and the assessment will be reported to the local governments for application of their millage rates. Cities in British Columbia also impose business license taxes, but the province levies the sole sales tax of six percent.

Provincial statutes in B.C. do not provide for any impact assistance for municipalities affected by mining operations. Canadian communities can extend boundaries to include nearby mines in order to generate additional property tax revenues for needed services, provided they meet certain criteria and follow provincial procedures--not unlike the boundary extension provisions in Alaska statutes. Generally, however, cities and mining companies negotiate arrangements to meet the need for public services caused by a particular mine. Impact assistance offered by mining companies are apparently not deductible or credited against provincial taxes impose on mining operations.

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Please contact me if I can answer any questions or be of further assistance.

Attachments

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ATTACHMENT A

Excerpt from State and Local Taxation of Natural  
Resources in the Federal System, American Bar  
Association, 1986

icular jurisdictions or resources in this chapter will be illustrative rather than systematic.<sup>2</sup> The slighting of these potentially intrusive details at this juncture, however, is not a device for ignoring them altogether. How particular states and localities tax particular natural resources is an integral part of what this book is about. To deal with this mass of detail, this book includes an Appendix, as described in the Introduction, that summarizes current law and practice on a state-by-state basis.

### 1. The Ad Valorem Property Tax

Inasmuch as the existing framework of state and local taxation of natural resources was shaped in important respects by the difficulties of taxing them under the traditional ad valorem property tax, our discussion will begin with that levy. First, however, it is essential to have some familiarity with the nature and operation of the ad valorem property tax.

#### A. The General Nature and Operation of the Ad Valorem Property Tax

As observed in the preceding chapter, the ad valorem property tax—the tax on property according to its value—was for many years the primary source of revenue for state and local governments. As the movement toward separation of state and local sources of revenue took hold, the states gradually reduced their fiscal dependence on the property tax leaving it largely, and, in some cases, entirely to local governments. The property tax today is the cornerstone of local finance and ranks second only to the federal personal income tax as a producer of revenues in the United States.<sup>3</sup>

In rudimentary outline, the American ad valorem property tax system operates in the following manner. The taxing unit (the county, the school district, the municipality, etc.) establishes its budgetary requirements. The amount so established (less any revenues from sources other than the property tax) determines the revenues that must be raised by the property tax. The revenues are raised by levying a tax at the appropriate tax rate or percentage of the assessed value of taxable property in the taxing unit. The assessed value may be the fair market value of the property or it may be a statutory or customary percentage of the fair market value at which property is valued for tax purposes. The percentage or tax rate applied to this value is generally expressed in terms of dollars and cents per thousand dollars of assessed value and is commonly called a "millage rate." The millage rate is determined by dividing the budget needs to be satisfied through ad valorem taxation by the total assessed value in the taxing unit. Thus to fund a one million dollar budget in a jurisdiction with \$100 million of assessed value the tax rate would be one percent or ten mills.

The starting point for determining the assessed value of most property is the fair market value of the property, which is typically defined as "the value at

which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts."<sup>4</sup> There are three accepted methods for ascertaining fair market value. The "comparable sales" or "market data" method determines fair market value by reference to recent sales of the property itself and/or to recent sales of comparable properties. The "cost" method determines fair market value by reference to the current cost of reproducing the property less depreciation from physical deterioration and functional and economic obsolescence, although factored historical cost and replacement cost are sometimes employed.<sup>5</sup> The "income" method determines fair market value by capitalizing the income produced by the property, i.e., by translating the income produced by the property into a corresponding value for the underlying property producing the income.

The assessment function is generally assigned to the county assessing officer. After determining the assessed values of properties within the county, the county assessor certifies these values to other taxing units in which the properties are located. Not all property is locally assessed, however. In most states, a state-wide body has assumed the function of assessing certain specialized property—Utility property—e.g., railroad, telephone, and power company property—is usually assessed on a centralized basis. Natural resource property is sometimes centrally assessed, and, where this occurs, a distinction must be drawn between the underlying resource (which may be assessed by the state) and the property employed to produce the resource (which is likely to be assessed locally). The state assessor will certify the assessed value of centrally assessed property to the local taxing unit, much as the county assessor certifies the locally assessed property to taxing units lying within the county.

#### B. Treating Natural Resources Like Other Property for Ad Valorem Tax Purposes—The Search for Value

As explained in Chapter 2, the methodological controversy over the question whether natural resources should be treated like other property for ad valorem tax purposes was a critical factor in the development in some states of a separate regime for taxing such resources. In other states, however, opponents of special taxing measures for natural resources prevailed. In these states, the ad valorem tax in its traditional form continued to apply to natural resource property as it did in states whose special provisions for taxing such property were selective in their impact. For these reasons, the traditional ad valorem property tax plays a significant role in the existing framework of state and local taxation of natural resources.

The central problem in the ad valorem taxation of natural resources in jurisdictions that treat such resources like other property is the determination of fair market value. Of the three established methods for determining fair market value for property tax purposes, the income method is generally recognized as the most appropriate for "producing" natural resource property,<sup>6</sup> a term used broadly in this discussion to describe property from which commercially sig-

<sup>2</sup> With the exception of forest resources, which are treated separately in this work in Chapter 2.

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nificant quantities of a resource are being produced.\* Sales of producing natural resource property do not ordinarily occur with sufficient frequency to support a market data approach to valuation. And when they do, the differences between individual properties are so marked that the sale of one would rarely qualify as a reliable indicator of the value of another—i.e., it would not be a "comparable sale." As a practical matter, then, the unusual producing natural resource property that changed hands in an arm's-length transaction would be the sole candidate for application of the market data approach. In fact, the market data approach is seldom employed to value producing natural resource property.

The cost approach has even less relevance to the valuation of producing natural resource property. For the most part, such property is not reproducible, thus eliminating the possibility of a reproduction-cost based valuation. With respect to timber, the principal renewable natural resource of interest here, a cost-based approach could in principle be utilized by reference to the cost of seedlings, fertilizer, forest management, etc., adjusted for the timing of the expenditure. The cost method has not, however, enjoyed any currency in the valuation of timber resources, perhaps because such resources usually have no original cost, perhaps because the gestation period for growing merchantable timber introduces overwhelming uncertainty into the determination of cost, perhaps because we are simply unaccustomed to thinking about the cost of producing a natural resource.\*\*

The income method thus remains the only practicable approach in most cases for determining the fair market value of producing natural resource property. The income method attempts to determine the fair market value of property by reference to the income produced by that property. The relationship between income and value may be expressed in terms of a rate, called the capitalization rate, that represents the percentage of the property's value that one would expect to receive as annual income from the property. The relationship between income, capitalization rate, and value in its simplest form may be expressed algebraically as

$$\frac{I}{r} = V$$

where  $I$  is the income produced by the property,  $r$  is the capitalization rate, and  $V$  is the value of the property. Thus if a property generates \$10,000 in annual income, and if one would expect to receive ten percent of the value of the property in annual income, the value of the property determined by the income method would be \$100,000.

\* The problem of valuing nonproducing natural resource property will be considered below.

\*\* In any event, as already noted, the peculiar problems associated with state and local taxation of timber resources will be addressed separately below, see pp. 86-91, with the income discussion directed largely at nonrenewable natural resources.

$$\frac{I (\$10,000)}{r (0.10)} = \$100,000$$

In establishing the capitalization rate, one must consider among other things the character of the income and property in question. For example, if the property is a wasting asset (like a building or a mine) and if the income stream to be capitalized has not already been reduced to provide for recapture of the owner's original investment in the asset, the capitalization rate must take account of this fact. In such a case, the capitalization rate would reflect not only the percentage return that one would expect to earn on an investment of that nature but, in addition, a percentage return which, when multiplied by the expected life of the asset, would restore to the owner his original investment in the asset.

The valuation of a nonrenewable natural resource property is a special case of the generic problem of valuing a wasting asset. In 1877, Henry Davis Hoskold, a British mining engineer, addressed that special problem in his pioneering volume, *The Engineer's Valuing Assistant*.<sup>16</sup> Employing an income based approach, Hoskold developed a classic and enduring formula for the determination of the fair market value of mineral property. The method embodied in the formula involves the estimation of the future income from the mine, the probable life of the mine, the rate at which the mine's future income should be reduced to present value (the "discount" or "risk" rate), and the rate of interest at which a portion of the mine's income is accumulating in a fund earmarked for restoration of the owner's original investment (the "sinking fund" or "sift" rate).<sup>17</sup> The Hoskold formula may be expressed algebraically as

$$V_p = \frac{A}{\frac{r}{R^n - 1} + r}$$

where  $V_p$  is the present value of the mine,  $A$  is the average annual net income from the mine,  $r$  is the "sift" rate earned by capital accumulating in the sinking fund,  $r'$  is the "risk" rate reflecting the yield that the mine owner expects on his investment,  $n$  is the number of years the mine will be productive, and  $R$  is  $(r' + 1)$ .<sup>18</sup> In 1962, more than a century after the initial publication of Hoskold's *Engineer's Valuing Assistant*, the Minnesota Supreme Court declared that "in the absence of comparable sales, the so-called Hoskold formula for many years has been utilized to arrive at market value in assessing property which is being mined."<sup>19</sup> That statement, if read to embrace the variations on and modifications of the Hoskold formula that have been developed over the past 100 years,<sup>20</sup> would accurately describe the approach to valuation of producing natural re-

<sup>16</sup> Including discounting cash flow analysis.

source property in many of the jurisdictions that attempt to determine its fair market value for property tax purposes.

The Hoskold formula and its progeny<sup>10</sup> have created an aura of objectivity around the determination of the fair market value of natural resource property. Indeed, the Hoskold and other formula-based approaches to the valuation of mineral property that rely on some form of income capitalization to determine its fair market value are often denominated the "scientific," "engineering," or "analytic" approach to valuation,<sup>11</sup> adjectives we tend to associate with rigor and precision. The widespread use of such formulas, sanctioned by judicial decisions,<sup>12</sup> may also have contributed to this impression. A closer examination of the underlying components and practical application of the Hoskold and kindred formulas, however, reveals that this impression is false.

There are four essential components of the Hoskold formula: the mine's economically productive life, its average annual net income, the "risk" rate for discounting the mine's future income to present value, and the "safe" rate for determining the interest earned by the sinking fund.<sup>13</sup> The mine's productive life is determined by dividing its total estimated reserves by its anticipated annual rate of production. Because neither the reserves nor the production rate can be ascertained with mathematical certainty, the quotient of the two—productive life—may be vulnerable to error on two counts. The possibility of error increases further when one attempts to determine a mine's future annual net income, which represents the difference between the gross income from the mine's output and the cost of producing that output. Future gross income will depend on the price that the resource will generally command in the market as well as the quantity and quality of the particular output produced by the mine. Estimates of each of these elements is likely to vary considerably among commodity analysts and mining engineers. Moreover, estimates of the future costs of producing the output depend on a prediction of the future costs of labor and equipment in the extraction and processing of mineral reserves under economic and geological conditions that may be only dimly perceived. The "risk" and "safe" rates are no less affected by judgmental considerations than are the estimates of a mining property's future life and income. They depend, after all, on a forecast of future inflation, interest rates, and the risk of particular mining ventures, the accurate prognosis of which consistently eludes even the most knowledgeable observers.

It is not just the intrinsically speculative character of the mining income capitalization formulas that raises questions about the reliability of the valuations they produce. It is also that minor differences in the estimates of any one of the components (or subcomponents) of the formula can create dramatic variations in the determination of the fair market value of the property. For example, suppose a mine produces 100 million pounds of ore per year, at a cost of \$0.30 per pound and a price of \$0.40 per pound, thereby generating annual gross

<sup>10</sup> In practice, the use of a single rate income capitalization formula utilizing the same rate for both return on and return of investment is employed much more commonly in the mining industry today than either the Hoskold or other multiple rate formulas.

income of \$40 million and annual net income of \$4 million.<sup>14</sup> Assuming a twenty year life for the mine and a "safe" rate of six percent, increasing the "risk" rate from six to eight percent will reduce the fair market value of the property under the Hoskold formula from \$45.9 million to \$37.1 million, a change of more than twenty five percent. Increasing the "risk" rate just one percent from eight to nine percent will reduce the property's fair market value under the Hoskold formula from \$37.1 million to \$34.1 million, still a change of nearly ten percent. Increasing the "safe" rate from four to six percent under the same assumption (and an assumed "risk" rate of ten percent) produces about a five percent change in the fair market value of the property. And varying the property's productive life from three to five years, from fifteen to twenty years, and from forty-five to fifty years under a ten percent single rate capitalization formula produces respective increases in the property's fair market value from \$9.9 million to \$15.1 million (thirty four percent), from \$30.4 million to \$34.1 million (eleven percent), and from \$39.5 million to \$39.7 million (one-half percent). When these variations are considered in light not only of their cumulative impact but also the uncertainty surrounding the estimates of the underlying figures, the margin for error in the determination of the fair market value of any particular property becomes apparent.

Despite the problems inherent in the income approach to determining the fair market value of producing natural resource property, this is the prevailing method in most of the jurisdictions that seek to ascertain that value for property tax purposes. In Arizona, which has been the nation's leading producer of copper since 1910,<sup>15</sup> the use of Hoskold and similar formulas for determining the fair market value of the state's copper mines is a well-entrenched tradition. In the early twentieth century, the state endured a bitter and protracted struggle—typical of those experienced by other Western states—over the appropriate approach to taxing its mineral resources. Proponents of the ad valorem approach prevailed, and, as a result, the mining industry in the state has been subject to the general ad valorem property tax ever since Arizona achieved statehood in 1912.<sup>16</sup> By 1912, the Arizona Supreme Court had put its imprimatur upon the income method of valuing mineral interests:

the trial court in fixing the value of the mine in question followed the usual and correct rule of estimating the probable gross revenue to be received from the ore presumably contained in the mine, deducting therefrom the probable cost of extraction, reduction, and selling the product of the ore, including therein all factors of cost, and reducing the difference, which would be the net value of the product, to its present worth, based upon such net value and the length of time it would probably take to produce it. It is concluded, as it must be, that this formula is the proper one to be used in determining the actual cash value for taxation of a producing mine at any particular time.<sup>17</sup>

The court's commitment to these principles has not wavered in the course of the ensuing half century of litigation over them.<sup>18</sup>

The ease with which the basic principles of valuation may be stated, must

obscure the difficulties that have been encountered in their implementation. The *Arizona* cases are illustrative. In one instance, four "experienced mining and valuation engineers"<sup>19</sup> testified on behalf of the taxpayer and basing their testimony on estimates of a mine's reserves, its economically productive life, and its future net profits, reached fair market value judgments ranging from \$5.2 million to \$7.1 million<sup>20</sup>—a variation of thirty-seven percent. In another, the mining company's six expert witnesses produced valuations of a mining property ranging from \$7.2 million to \$8.45 million<sup>21</sup>—a variation of fifteen percent. And all these valuations were advanced by the taxpayers' own witnesses! The discrepancies among them pale by comparison to those produced by opposing sets of experts whose assumptions tend toward antipodal extremes, shaped as they are by the litigating posture of the party by whom they have been retained. For example, in one case decided in 1978, the taxpayers' witnesses testified to a valuation of \$15.9 and \$19.7 million for a mining property that was valued at \$93.7 and \$79 million by the state's experts.<sup>22</sup> One could recount similar tales in other jurisdictions that rely on an income capitalization approach to determining the fair market value of natural resources under the property tax.<sup>23</sup>

The familiar observation drawn from these experiences that the income approach to valuation of natural resources works imperfectly<sup>24</sup> does not necessarily stand as a blanket indictment of it. Indeed, it might instead elicit Dr. Johnson's reaction to the sight of a dog walking on its hind legs: "It is not done well, but you are surprised [not] to find it done at all."<sup>25</sup> With respect to oil and gas, for example:

the extreme difficulties attendant upon making any sort of realistic valuation of reserves has led the states, either formally or informally, to the use of methods which, for all practical purposes, have converted the property tax into something that bears a very close resemblance to a severance tax.<sup>26</sup>

Yet some important oil-producing states, notably California, Texas, and Kansas, remain committed to assessing oil and gas interests on the basis of their fair market value for property tax purposes.

The California property tax regulations provide:

The market value of an oil and gas mineral property interest is determined by estimating the value of the volumes of proved reserves. Proved reserves are those reserves which geological and engineering information indicate, with reasonable certainty to be recoverable in the future, taking into account reasonably projected physical and economic operating conditions. Present and projected economic conditions shall be determined by reference to all economic factors considered by knowledgeable and informed persons engaged in the acquisition and buying or selling of such properties, e.g., capitalization rates, product prices and operation expenses.<sup>27</sup>

California has developed detailed guidelines to aid assessors and taxpayers to conform to these regulatory objectives,<sup>28</sup> and it employs a staff of specialized professionals to appraise oil and gas property.<sup>29</sup> In the view of Robert Paschall, a distinguished petroleum engineer and veteran of California's property tax

administration, the system functions satisfactorily, even if it may be characterized as "half science and half art."<sup>30</sup> Like California, Kansas provides guidance for the application of its income based approach to valuing oil and gas property under the local property tax.<sup>31</sup> There is some question, however, whether it has adopted an authentic income capitalization formula for determining the fair market value of such property.<sup>32</sup>

In Texas, the determination of the fair market value of oil and gas property for ad valorem tax purposes for many years resisted description as a "system." Although<sup>33</sup> the same basic "engineering" approach to valuation was employed in Texas as in California, there was no tradition in Texas of relying on detailed administrative guidelines implemented by a staff of state employed experts to assist local assessors in the appraisal process. Instead, as suggested in Chapter 2, the ascertainment of fair market value has depended largely on "a long and involved series of conversations culminating in a determination of just how much the producer eventually pays over to the taxing jurisdiction."<sup>34</sup> Local Texas taxing districts have historically relied on independent appraisers to value oil and gas property. As described by one oil company attorney:

I doubt if there is any other field in taxation that has a phenomenon like the ad valorem tax expert in Texas. He is a self-appointed, independent contractor who makes an arrangement with a county or taxing jurisdiction to provide services in connection with oil and gas tax valuations. In return he receives either a flat fee or in many instances a percentage of the total amount of valuation which he produces. This is somewhat similar to paying a prior certain percentage of the verdict he renders against the defendant.<sup>35</sup>

In practice, the fair market value determinations of oil and gas properties provided by these experts to the assessment district were the result of negotiations between the experts and the taxpayers over the quantity of remaining oil or gas reserves, the future price of oil or gas, the future costs of extraction, and the appropriate rate for discounting to present value the future income from the property.<sup>36</sup>

Mineral property valuation in Texas still depends on the outcome of negotiations between representatives of the mineral industry and independent appraisal firms hired by local assessing authorities. But these negotiations are now informed by an appraisal manual issued by the State Property Tax Board, which was created in 1980 when Texas' property tax procedures were revised and modernized.<sup>37</sup> The manual details sophisticated income capitalization techniques, relying on discounted cash flow analysis, for guidance to assessors in appraising oil and gas property. Taxic guidelines are beginning to have a significant impact on traditional local assessment practices, even though the state does not maintain a staff to administer the guidelines.<sup>38</sup> Professional appraisal firms across the state are applying premises and appraisal techniques incorporating the economic and engineering principles embodied in the guidelines.<sup>39</sup> Moreover, their incentives to arrive at lofty valuations have no doubt been cooled by the Texas Property Tax Code which now provides:

A contract for private appraisal services is void if the amount of compensation to be paid the private appraisal firm is contingent on the amount of or increase in appraised, assessed, or taxable value of property appraised by the appraisal firm.<sup>42</sup>

The income method, while predominant, is not the only mode of valuing natural resource property in jurisdictions that seek to place it on the tax rolls on the basis of its intrinsic value. Pennsylvania, with its abundant deposits of coal, is typically a jurisdiction in which the income approach to valuation is held in disfavor.<sup>43</sup> Instead, a variety of factors—comparable sales, the location, quality and quantity of the property, demand for the product, and economic conditions, to name just a few—are all accorded weight in the ultimate value judgment. Pennsylvania's animosity toward the income approach is usually traced to these remarks of the state supreme court:

It is unnecessary for the purposes of this case to review these various elements of value and the weight to be given to them in determining assessments. However, there is no doubt that it would contravene well established principles to reduce the assessments of the company's properties in exact proportion to the number of tons of coal removed from each tract. . . . We have repeatedly condemned the use of such mathematical shortcuts in the making of assessments. As we said [in an earlier case]: "Scientific formulas, arithmetical deductions, and mental contemplations have small value in making assessments under our practical system of taxation."<sup>44</sup>

In fact, the ad valorem taxation of mineral resources in Pennsylvania has defied generalization. Administered on a county-by-county basis with no guidance from the State (other than the general injunction to assess property at its "actual value"<sup>45</sup>), the "system" has been rooted in customary local practice.<sup>46</sup> Methods for valuing coal and other natural resources have run the gamut from comparable sales to a multiple of the preceding year's production to a fixed amount per acre to a "band of value" approach (whereby the value of the resource varies with its geological characteristics and proximity to the mine shaft).<sup>47</sup>

Yet even Pennsylvania, with its historical antipathy for the "scientific" approach to property tax valuation of mineral resources, may be changing its ways. Beginning in the mid-1970's, some of the coal-rich counties, aided by an expert appraisal firm, undertook to value their coal-bearing property on a more systematic basis. Producing properties were appraised by discounting to present value the future expected income from the properties. Nonproducing properties, (i.e., properties in which mineral rights had been purchased but for which no mining permits had been issued, were valued on the basis of comparable sales. Despite vigorous opposition from the coal companies in the initial phases of the assessment process,<sup>48</sup> the revised appraisals have provided the basis for increased assessments. Here, as elsewhere, however, the ultimate value determinations were the outcome of extended negotiations between representatives of the taxpayer and the taxing authority.<sup>49</sup>

For many years, Pennsylvania's neighboring state of West Virginia had taken

a similar approach to the ad valorem taxation of its mineral property, and its practices spawned critical comment:

The methods for valuing coal property for ad valorem taxation in West Virginia have been arbitrary and assumed as the number of county assessors who have held office in the coal-bearing counties of the State. The lack of any scientific or standardized method of valuation by assessors has resulted in inequities among assessed coal property values.<sup>50</sup>

Dissatisfaction with this state of affairs led the West Virginia State Tax Department in 1971 to undertake a mass appraisal of the state's coal properties. It rejected the cost approach as "obviously not conducive to mineral valuation"<sup>51</sup> and the income approach as unsuitable for the "vast area of nonproducing, reserve coal."<sup>52</sup> The Department settled instead on a market data methodology for valuing the coal in the state's forty coal-bearing counties. Relying on maps of the state's coal seams and records of transactions in coal property, the Department arrived at an average county-wide value per acre of coal, based on seam thickness, British Thermal Unit (BTU) content, royalty rates, land sales, and an average per acre tonnage estimate. In the early 1980's, the appraisal process was still in the throes of adjustment. The State Tax Department was nevertheless sufficiently happy with the results, which produced a substantial increase in the assessed value of the state's coal property, that one of its spokesmen predicted that "oil, gas, limestone, and timber will be the center of [the Department's] future attention."<sup>53</sup> The verdict on the results of West Virginia's reappraisal program was not unanimous, however. Characterizing the reform efforts as "unsuccessful,"<sup>54</sup> one observer noted that barely more than half of the state's coal-producing counties have been reassessed, that the three largest coal-producing counties remain untouched, and that the mapping techniques and valuation formulas are open to question.

Before we conclude this section, two additional features of ad valorem taxation of natural resource property warrant brief consideration. The first is the distinction between producing or developed property, on the one hand, and non-producing or undeveloped property, on the other. There are conspicuous differences between the patterns of valuation and taxation of the two types of property in many states' ad valorem taxing schemes. Thus the income approach to valuation, which is susceptible to criticism even in its familiar application to producing property, has proven to be virtually worthless as applied to nonproducing property.<sup>55</sup> Before development has occurred or in the early stages of exploration, knowledge of geologic structures, estimates of recoverable reserves, anticipated costs of extraction, and projected income are speculative in the extreme. At the same time, the market data approach, widely regarded as unsuitable for valuing established mines that seldom are sold, has been found useful in valuing undeveloped mineral property which changes hands with relative frequency. As noted above, the market data method is now being employed to value such properties in Pennsylvania and West Virginia, and it is utilized in other jurisdictions as well.<sup>56</sup>

Even more important than the variations in the methods of valuing producing and nonproducing property is the fact that many states do not include the mineral content of nonproducing property within the ad valorem tax base at all. States that generally attempt to tax natural resource property on the basis of its fair market value but nevertheless fail to tax the mineral value of nonproducing property presumably do so for one or more of the reasons articulated by the Mississippi Legislature in exempting interests in nonproducing mineral property from ad valorem taxation, namely,

[to encourage the purchase of leases upon and interests in oil, gas and other minerals, . . . to encourage drilling for and production of such minerals, and to relieve the taxing officials of the counties of the state of the onerous duties of assessment for, collection of and sale for ad valorem taxes for such interests (which the legislature finds are generally . . . not commensurate with the services required of such officers).<sup>31</sup>

Jurisdictions that rely on proceeds-based measures of natural resource property in their ad valorem tax base exclude nonproducing property by definition, and they frequently refrain as a matter of law or practice from including the mineral value of nonproducing property in the tax base by some other means. This observation applies as well to jurisdictions that impose production taxes on natural resources in lieu of the ad valorem levy. Although full consideration of such jurisdictions will be taken up below, it is worth emphasizing at this juncture the pervasive character of the distinction between producing and nonproducing natural resource property in state and local tax structures.

A second significant aspect of the ad valorem taxation of natural resource property that we have yet to consider is the treatment of separate interests in the property. As a practical matter, the treatment of these interests is intimately related to the question we have just addressed, because the mineral value of undeveloped property will normally escape the attention of the taxing authority unless a mineral lease or other interest in the property has been conveyed and publicly recorded. The two issues exist independently, however, because there are known deposits of undeveloped minerals held in undivided ownership and because the problem of taxing separate interests in mineral-bearing property extends to interests in producing property.

Separate interests are frequently created in natural resource property when the owner of the undivided (or "fee") interest in the property conveys part of the interest to others while reserving part for himself. Indeed, natural resources are not usually extracted by the owner of the surface land.<sup>32</sup> The separate interest conveyed or reserved by the landowner may consist of the rights to all the minerals in the property, rights to a portion of those minerals, rights to specific types of minerals, or interests such as royalties, overriding royalties, and payments-in-kind. Most jurisdictions require that these interests be separately listed on the property tax roll and separately taxed to the person who is determined to be the owner of the interest.<sup>33</sup> This generalization should be read with several cautionary notes in mind, however. First, there is a bewildering maze of vari-

ations among the states, often rooted in arcane concepts of traditional property law, in the classification of these separate interests as real or personal property. These variations may have implications as to where and, in some cases, as to whether the property may be taxed. Second, there are striking differences among the states in their determination whether particular mineral interests are taxable to the surface landowner or to the person to whom the interest has been conveyed or by whom it has been reserved. Finally, as suggested above, insofar as these separate interests represent interests in nonproducing property, they frequently will not be taxed at all.

Several conclusions emerge from this discussion of the effort of some jurisdictions to determine the fair market value of natural resources under the ad valorem property tax. First, the search for value is, at best, a delicate undertaking, fraught with uncertainties that belie the image of mathematical precision created by the formulas normally employed to determine such value. At worst, the search can degenerate into a self-serving appraisal based on "magic engineering calculations, sinking fund guesswork, ore reserve estimations, machinery improvement projections, labor gyrations or foreign economic considerations."<sup>34</sup> Second, even among those states that state the premise that natural resource property should be assessed on the basis of its fair market value, there is marked diversity among states (and, sometimes, among counties within states) in their choice and implementation of valuation methods. Although the discussion here has emphasized the common themes that may be identified in the states' approaches, it is not designed to paper over the murky reality that lies underneath, some appreciation of which may be gained by even a brief glance at the Appendix. Third, it is noteworthy that several taxing jurisdictions historically identified as among the least systematic in their efforts to ascertain the fair market value of their natural resources under the local property tax have begun to take steps to rationalize their regimes in this regard. They have thus recognized the self-evident proposition—yet one often ignored in this context—that a system of ad valorem property taxation can function as such "only when all property subject to taxation has been valued."<sup>35</sup> Finally, however detailed or sophisticated the legislative or administrative guidelines utilized for ascertaining the value of natural resource property, the determination of fair market value often rests, in the end, on a negotiated compromise between representatives of the taxpayer and the taxing authority.

#### C. Treating Natural Resources Differently from Other Property for Ad Valorem Tax Purposes: Proxies for Value

Many jurisdictions have abandoned the search for the fair market value of natural resource property in their property tax regimes. They rely instead on proxies for value to be included in the ad valorem tax base. Such proxies typically amount to one year's gross or net proceeds, to a multiple or fraction of such proceeds, or to an arbitrary per-acre value. These deviations from the market value standard may reflect a considered judgment that the search for the fair market value of natural resource property is futile or at least not worth the

## MEMORANDUM

State of Alaska

TO: Hon. Emil Notti, Commissioner      DATE: April 29, 1986  
 Department of Community and  
 Regional Affairs      FILE NO.: 663-86-0456

THRU:      TELEPHONE NO.: 465-3600

HAROLD M. BROWN      SUBJECT: Power of borough to  
 ATTORNEY GENERAL      levy severance tax  
 FROM: By: *DV*      on minerals  
 Deborah Vogt  
 Assistant Attorney General

You have asked for our review of an opinion submitted to your office by Mr. Thomas Klinkner of Wohlforth & Flint regarding the authority of a first class borough to levy a severance tax on minerals. With some reservations, we agree with the conclusion of that opinion.

At the outset, we note that neither your request nor the opinion of Mr. Klinkner set out the language of a proposed tax, and as a result our analysis is in the abstract. We understand that the primary concern of the proposed borough is with the ability to tax the DeLong Mountain enterprise, which is on privately owned Native corporation land. Mr. Klinkner's conclusion is limited to the authority of the borough to levy a tax on minerals mined from lands in which the mineral estate is privately owned.

The framers of the Alaska Constitution were aware that the powers, particularly the taxing powers, of local governments had been construed very narrowly in other states. As the Alaska Supreme Court noted in Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978), the second sentence of article X, section 1, appears in the Alaska Constitution specifically to overrule the common law rule of narrow construction. 584 P.2d at 1120 & n.19. That provision reads: "A liberal construction shall be given to the powers of local government." 1/ As t<sup>h</sup> noted, the

1/ The section in its entirety provides:

Section 1. Purpose and Construction. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

framers placed the provision in what is now section 1 so that it would apply to general law municipalities as well as home rule municipalities. Id. at 1120-21 & n.19.

The Alaska Legislature has provided for two types of municipalities: home rule municipalities and general law municipalities. A home rule municipality "has all legislative powers not prohibited by law or charter." AS 29.04.010. A general law municipality "has legislative powers conferred by law." AS 29.04.020. I understand that the Northwest Arctic Borough would be a general law municipality and therefore limited to the powers specifically granted by the legislature.

AS 29.35.010 grants general powers to all municipalities, subject to other provisions of law. Among those powers is the power "to levy a tax or special assessment, and impose a lien for its enforcement." AS 29.35.010(6). It could be argued that the general power to levy a tax must be combined with a specific grant such as those found in chapter 45, authorizing property and sales taxes, in order for a general law municipality to levy a particular tax. However, we do not believe that the state supreme court would adopt such an interpretation. In Liberati, the court read the predecessor of this section, former AS 29.48.010(7) (which authorized municipalities "to levy taxes"), to be a "broad grant of taxing authority, limited only by other provisions of law" and to be "consistent with the second sentence of article X, section 1 which requires that '[a] liberal construction shall be given to the powers of local government.'" Liberati, 584 P.2d at 1120.

Chapter 45 of title 29 delineates specific provisions for municipal property taxes and sales taxes, and for the enforcement of tax liens. Those provisions include some limitations on property taxes and sales taxes, but are silent as to severance taxes. Thus, it appears that the general power to tax granted by AS 29.35.010(6) has not been limited by any other provision of title 29.

Nor do we find a limitation on this power to tax in any other statute. Nothing in the mining license tax specifically prohibits a municipality from levying a severance tax. In this regard, it should be noted that the legislature may limit the ability of a municipality to levy a tax, including a severance tax, and that it has done so in the past. AS 43.55 levies production taxes on producers of oil and gas. AS 43.55.017 specifically provides that the taxes imposed by that chapter "are in place of all taxes now imposed by the state or any of its municipalities, and neither the state nor a municipality may

impose a tax upon [production of oil or gas or oil and gas in place]." Similarly, AS 43.56 levies a property tax on oil and gas production and pipeline transportation property, and permits local taxation of that property subject to limitations. AS 43.56.030 provides that the taxes imposed in the chapter "are in place of ... all other ad volorem [sic] or other taxes imposed by a municipality on property subject to tax under this chapter ...."

Our inquiry would end here with the conclusion that the general power to impose a severance tax on minerals has not been limited by the legislature were it not for the concerns expressed by Justice Rabinowitz in his dissent in Liberati. In that case, the Bristol Bay Borough had levied a three percent tax on the sale of all raw fish caught within the borough. The challengers argued that the tax was a severance tax, and was prohibited by the provisions of article VIII of the Alaska Constitution. The majority of the court concluded that the tax at issue was a sales tax and did not reach the issue of whether a severance tax is prohibited by article VIII of the constitution. Justice Rabinowitz, however, concluded:

In my opinion, the severance tax imposed by Bristol Bay Borough does violate the provisions of Article VIII of the Alaska Constitution which reserve the benefits from, and control over management of the fisheries resource to all the people of the state. The effect of the borough's ordinance is to exclusively appropriate to its own benefit, and that of its residents, the use of a natural resource which is reserved to all of the people of the state for their common use. Article VIII, Section 2 of the Alaska Constitution reserved to the legislature, not the borough, the authority to act as to this resource. Absent a delegation by the legislature to the borough, I conclude that the ordinance contravenes Alaska's Constitution.

Liberati, 584 P.2d at 1124-25 (footnote omitted).

Mr. Klinkner concludes that this prohibition, if adopted by the court, would not apply to a tax levied on minerals mined from a privately owned mineral estate in real property. He further states that such private interests would include mineral estates patented under state or federal public land laws. We have some difficulty with his analysis at this point.

A severance tax is a general revenue tax levied on the activity of severing natural resources within the taxing jurisdiction. <sup>2/</sup> The power to levy this type of tax comes from a jurisdiction's sovereign, statutory or constitutional power to levy taxes, and not from the jurisdiction's proprietary interest in the resource. It is levied on the producer of the natural resource regardless of the ownership of the land from which the resource is produced. Thus, the severance tax at issue in Commonwealth Edison v. Montana, 453 U.S. 609 (1981), was levied by the State of Montana primarily on production from coal leases on federal lands. Alaska's oil and gas production taxes apply to oil and gas produced from state, federal and private land within the state. AS 43.55.011; 43.55.016.

Alaska is prohibited by the Statehood Act from alienating the mineral interest in mineral lands (1981 Op. Att'y Gen. #10 (Oct. 20)). <sup>3/</sup> If mining activity were to take place within the borough on state lands, the state would retain ownership of the minerals, just as the state retains ownership of the oil on state oil leases until the oil is severed. Thus, since it appears that any borough-wide severance tax would tax the production of state-owned minerals, we believe that the concerns raised by Justice Rabinowitz must be addressed in more detail.

One reading of Justice Rabinowitz's conclusions would be that the constitution reserves to the legislature all legislation dealing with natural resources in the state, whether those resources occur on public or private land. This reading appears consistent with Justice Rabinowitz's language that article VIII, section 2, reserves to the legislature "the power to act as to this resource." It would imply that, since the state has the power to levy a severance tax on minerals, that power resides solely in the legislature. We believe this reading to be too broad. The constitutional provision explicitly relied

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<sup>2/</sup> "Alaska's Oil and Gas Tax Structure: A Study with Recommendations for Improvement," Alaska Department of Revenue (1977), describes the Oil and Gas Properties Production Tax as "a tax on the activity of producing oil and gas in Alaska." Id. at II-2.

<sup>3/</sup> Contrary to Mr. Klinkner's representation, the state does not, and may not, patent mineral lands. 1981 Op. Att'y Gen. #10 (Oct. 20).

on by Justice Rabinowitz was article VIII, section 2, which provides:

Section 2. General Authority. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

It is clear from the minutes of the Constitutional Convention that this section was intended to apply only to the state's proprietary interest in natural resources, and not to a general, overall interest in resources within the state regardless of ownership. 4/ At the Constitutional Convention, that provision was developed from section 2 of Committee Proposal No. 8/a. During the floor debate of that section, the following discussion took place:

DAVIS: Mr. Riley, in Section 2, line 14, or actually lines 12, 13 and 14, it says, "The State of Alaska shall provide for the utilization, conservation and development of all of the natural resources, including lands and waters belonging to the State." It appears to me that as that is written it is broad enough to cover all natural resources, no matter whether they are privately owned, publicly owned, or what they may be. I am wondering if you did not intend to put a comma

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4/ The Commentary on what was then section 1 of Committee Proposal 8 (Natural Resources) read:

(Sec. 1. States' Proprietary Interest)

This section is a general grant of authority to the state for the utilization and development of all resources over which the state has a proprietary interest. This includes all game fish, wildlife, fisheries, waters and those lands and related land uses including mineral rights, etc., that may be acquired by the state through grants from the United States or by other means. Authority over private lands and resource interest is not provided in this article except as that authority is generally reserved in Section 18 [dealing with Private Ways of Necessity].

after the word "waters" at the end of line 14, so that it would then become clear that we are only talking about natural resources belonging to the state.

RILEY: That would be my conception of it, Mr. Davis.

DAVIS: There wasn't any intention that the state is going to develop natural resources on either federal land or privately owned land, is that right?

RILEY: No. The sections covered in the commentary states all resources over which the state has a proprietary interest, and I think the point is well taken.

4 Proceedings of the Alaska Constitutional Convention at 2499 (January 18, 1956). The provision was amended so that the words "belonging to the state" modified "natural resources" rather than only "lands and waters." Id. at 2500. Thus, it is clear that the framers intended the provision to apply only to the proprietary interest of the state, and not to all the natural resources that might be found within the boundaries of the state. It then follows that the article cannot be read to prevent any severance tax levied by a municipality on any minerals within the state.

Another possible reading would be that apparently subscribed to by Mr. Klinkner -- that the legislature retains the exclusive authority to act (including tax) as to resources in which the state retains a proprietary interest. The difficulty with this approach is that a severance tax is not a tax on minerals (state-owned or otherwise), but rather is a tax on the (private) activity of production. Oliver Iron Mining Co. v. Lord, 262 U.S. 172 (1922) ("[the tax] is not laid on the land containing the ore, nor on the ore after removal, but on the business of mining the ore"). As a result, there does not seem to be any neat distinction between a sales tax levied on state owned resources (after they are captured by a private party) and a severance tax levied on the private producer of minerals on state land. The tax at issue in Liberati was on fish -- a resource "reserved to the people for common use" by article VIII, section 3. The tax was levied exclusively on this resource. If the Rabinowitz language were read to prohibit a borough from acting (including taxing) as to resources in which the state has once had a proprietary interest (even after those resources are

captured by a private party), it would seem that this sales tax would be prohibited also. The majority of the court, however, had no difficulty finding that tax constitutional.

If the constitution were construed to prohibit only a municipal severance tax as applied to the production of state-owned minerals, then two identically situated private companies, one producing minerals under a lease on state lands and another producing minerals under a lease on private lands, would be treated very differently. The justification for this difference would have to be that article VIII impliedly limits municipal authority in this area. But, as set out above, the constitutional framers intended that municipal powers should be broadly construed, and made this intent explicit. The majority of the court in Liberati held that "we should not be quick to imply limitations on the taxing power where none are expressed." 584 P.2d at 1121.

We believe that a better reading of the restrictions of article VIII, and particularly section 2 of that article, is that the provisions reserve to the legislature the exclusive authority to act as to the state's proprietary interest in natural resources. Thus, a borough would be prohibited from entering into a royalty contract for the production of minerals on state lands, from issuing grazing leases, and from appropriating water. 5/ An entity's power to tax is separate from its proprietary interest. See Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 145-46 (1982). We do not believe that, after full briefing, the full Alaska Supreme Court would hold that article VIII limits taxing authority, whether that authority is exercised by the state or by a municipality.

It may well be that, as a policy matter, the legislature will conclude that the production of mineral resources in the state should benefit the people of the state as a whole, and not just the people of the municipality in which the natural resources occur. The legislature may prohibit a local severance tax altogether, as it has done in AS 43.55. Or, it may devise a particular plan for distributing the revenue from a type of tax between the municipality and the state, as it has done in

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5/ The Department of Law has advised that this provision prohibits a municipality from exerting authority over the appropriation of water. 1974 Inf. Op. Att'y Gen (Apr. 4; James Reeves).

Hon. Emil Notti, Commissioner  
Department of Community & Regional Affairs  
663-86-0456

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AS 43.56. Absent a restriction by the legislature, we believe that a borough may exercise the power to levy a severance tax.

DV:jf



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

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Mail Stop 3100  
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September 2, 1987

MEMORANDUM

TO: Representative Kay Brown  
ATTN: Eric Myers  
FROM: Brad Pierce *BP*  
Legislative Analyst  
RE: Alaska Mining Issues  
Research Request 88.013

In light of the recent Alaska Supreme Court decision (Trustees for Alaska vs. State) which ruled that the present location system for mining claims on State land violates Section 6 (i) of the Alaska Statehood Act (because it does not require the payment of rent or royalties by hardrock miners), you asked that we provide research discussing several interrelated mining issues:

- (1) Rents and royalties from minerals on State land.
  - How do other states address the issue of mineral rents and royalties from State lands?
  - Which states use a lease system?
  - Which states use a location system?
  - Which states use a combination lease/location system?
- (2) Administrative implications of a change in the current State system.
  - What would be the potential advantages of a single, comprehensive leasing system in terms of management costs and administrative simplicity?
  - What are the potential disadvantages of a comprehensive leasing system?

(3) Economic rent from mining on State land.

- Review applicable studies that quantify the potential for economic rents from mining on State land.
- Is there a discernible relationship between the price of specific metals (especially gold), mining activity on State land and potential economic rent?

(4) Reclamation of State mineral lands.

- Review applicable reclamation standards or requirements for State land.

We first briefly discuss the implications of the recent Alaska Supreme Court decision on State mineral leasing practices and then focus on the issues you raised. Several attachments provide background material. Attachment A is the text of Trustees of Alaska vs. State. Attachment B contains an Alaska Journal of Commerce and Pacific Rim Reporter article, "Court Decision May Hold Serious Consequences for Placer Miners." Attachment C is a Department of Natural Resources (DNR) study, "Report on Selected Mining Leasing Systems in the United States and Canada." Attachment D contains the annual permits, paperwork and fees that must be filed with DNR by placer miners. Attachment E is DNR's outline of options for responding to the Supreme Court decision. Attachment F contains the sections of the Alaska Administrative Code that deal with reclamation of mining sites. Attachment G is a statement of "Interagency Placer Mining Enforcement Priorities 1978" signed by the commissioners of the Departments of Environmental Conservation (DEC), Fish and Game (ADF&G) and Natural Resources (DNR).

**Trustees for Alaska vs. State**

Under the traditional "location system," a miner is allowed to locate a mining claim on State land when a mineral deposit is found. The federal 1872 Mining Law is the basis for the location system in Alaska. A miner stakes the corners of his claim (typically less than 40 acres per claim) and records the location with the Department of Natural Resources (DNR) district recording office. A mining claim on State land may be maintained by performing \$200 worth of annual labor per claim or location. Miners do not have to pay rent or royalty to the State as long as the minimal amount

Representative Brown  
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of annual labor is performed as documented in the annual labor report filed with the district office (see Attachment D). All locatable minerals on State land are open to claim staking under the location system, unless specifically restricted to mining under a lease.<sup>1</sup>

In 1983, a coalition of environmental, Native and fishing groups challenged the State's location/leasing system for the extraction of hardrock minerals on the grounds that it violated the Statehood Act (see Attachments A, B, and E). On May 1, 1987, the Alaska Supreme Court ruled that the coalition was entitled to bring this lawsuit because the potential revenues the State is giving up by not charging rent are of "public significance". According to the appellants in the case, about 50,000 existing mining claims in Alaska are<sup>2</sup> affected and the State is illegally giving up over \$100,000 in royalties.<sup>2</sup>

The court ruled that rent or royalties must be paid to the State by any miner operating on State "mineral lands" and that labor in lieu of rent was invalid. The court defined "mineral lands" to include all State lands that were known to be "mineral in character" at the time they were selected by the State. Much of the current legal controversy over the Court's decision revolves around the interpretation of the "mineral in character" definition--exactly when State land was known to contain mineral prospects and what criteria determine which are mineral lands. According to DNR, the traditional test is "known or believed to be valuable in minerals," which leaves a wide range of possibilities for a State leasing program (see Attachment E).

As noted by attorney Rick Johannsen in Attachment B, the Supreme Court decision raises more questions than it answers. It is very likely that any statutory or regulatory changes made to bring the State into compliance with the court's decision will face further legal challenge. The State has appealed the case to the U.S. Supreme Court and Trustees for Alaska is also cross-petitioning the Court to review the decision. The DNR has asked the Attorney General's Office to come up with a supportable definition of "mineral in character."

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<sup>1</sup>There is a very small amount of State land that is not open to claim staking and is restricted to mining under lease.

<sup>2</sup>The court's decision does not affect the majority of placer claims in the state; over 80 percent of placer mining claims in Alaska are on federal land and most of these date to pre-statehood.

### Rents and Royalties from State Mineral Lands

In 1981, the Alaska Department of Natural Resources--Division of Research and Development--conducted a survey of mineral leasing alternatives used in 16 western states and four Canadian provinces, as well as on federal acquired lands and Alaska's submerged lands (Attachment C). According to this study, there are three basic leasing systems in use: mining location with subsequent conversion to lease; noncompetitive leasing through preference-right conversion of prospecting permits; and direct leasing through an application process or competitive bidding.

Three states and three provinces use location as a first step in leasing, allowing miners to hold claims for terms of 60 days to three years before converting to a lease agreement. (Attachment C contains a chart that provides a comprehensive list of mineral leasing systems in the western states and Canada.) In nine states and two provinces, as well as on federal acquired lands and Alaska's submerged lands, miners apply for prospecting permits as a first step to leasing. The terms of prospecting permits vary from six months to ten years. Six states allow miners to apply directly for a lease without prior claim or prospecting permit. In 12 states and on federal acquired land, competitive lease sales may be held. Lease terms range from three to 99 years in western states, with the most common duration being 10 - 20 years. Canadian lease terms are 21 years.

Seventeen of the 22 governmental entities surveyed by DNR charge a royalty on minerals removed from their leases. A mineral royalty is a percentage of the value of the minerals produced from a mine. Royalties may be paid in addition to rent on mineral leases, though in some cases rent is deducted from royalty payments. Royalty rate schedules vary widely among the various states and provinces. Depending on the commodity and state, royalties may be assessed on the basis of volume of minerals mined and removed from the leased premise or as a percentage of the gross or net value of minerals removed. In some states and on federal acquired lands, royalty rates are negotiated for each individual lease.

### Administrative Implications for Changes in the Current State Lease System

The present location system is very easy to administer. The system virtually runs itself and DNR has only to maintain district recording offices for claims and other paperwork to be filed and fees to be collected. Any change from the present system is likely to encounter stiff opposition from miners, who naturally do not want to pay more to maintain their claims. On the other hand, the paperwork associated with an annual rental payment should be at least as simple as the current "Affidavit of Annual Labor" form procedure (see Attachment D for copies of the forms).

The DNR's general policy goals for a revised mineral leasing system include: consistency; fairness; avoiding further litigation which may jeopardize mining on State land; and ensuring a fair and reasonable return for use of State land and minerals. Attachment E contains a cursory analysis by DNR staff of four options for a revised mineral leasing system. One option, which the State is already pursuing, is to ask the U.S. Supreme Court to review the decision. Another would be to convert the present system to a simple leasing arrangement, where miners simply pay an annual rental fee on their claims.

The two remaining options are based on how broadly the definition of "mineral in character" is interpreted. Under a broad definition, most mining claims would fall under the leasing system and be subject to rent and/or royalty payments. Those lands which were not known to be "mineral in character" would remain under the present location system. Under a narrow definition, few claims would be included in the leasing system. Both of these options would entail increased administrative costs and result in a combination system where some miners would fall under the leasing system and others could remain under the location system. A two-track system could be challenged in court on the grounds of fairness.

Objectively, the "mineral in character" criteria may be specious. Presumably a miner stakes a claim on State land because he thinks the land might contain mineral deposits, regardless of when or if the State government knew of it. This issue will likely be decided in court. The two-track leasing system options that would be a consequence of the "mineral in character" criteria do not appear to meet any of the DNR policy goals stated above. The simplest and easiest leasing system to administer would be one which charged a flat annual fee per claim. Such a system would also discourage speculative holding of claims and would be likely to reduce the total number of active claims considerably. From a practical standpoint, DNR is understaffed and would have a very difficult time administering any program that requires staff time in addition to the present work load.

If a simple leasing system is chosen as the preferred option, then the question of whether to charge royalty payments for minerals removed from State leases "to ensure a fair and reasonable return for use of State land and minerals" needs to be resolved. As enumerated in Attachment C, there are many different royalty systems. The easiest way to categorize them is whether they are calculated on gross or net volume/value of minerals removed. There are advantages and tradeoffs to each system that are related to the cyclical swings in mineral commodity prices.

Royalty payments on gross volume/value of minerals removed have the advantage of being easy to administer but may encourage "high grading" and discourage mining and employment during periods of depressed mineral prices (explained in the next section). Royalty payments on the net value of minerals removed allow the State to share in the increased profits when mineral prices are high. Net value royalty systems are difficult and costly to administer because the State must have detailed knowledge of the mining operation. Simple net value royalty approaches fail to distinguish between profits necessary to provide a competitive return to capital and "excess profits" or economic rent (explained below). By requiring a share of the returns necessary to attract adequate funding for a mining project, the net value approach can also discourage capital investment in marginal projects. Some states use a sliding scale on the gross volume/value or net returns to encourage mining of marginal projects and capture a share of increased profits during periods of high commodity prices. Of course, this type of royalty system has the disadvantage of being complicated to administer.

#### Economic Rent from Mining on State Lands

Economic rent can be defined as the excess of revenues over the costs of mining and processing, where costs include a profit sufficient to attract capital funds to the project. The degree to which a leasing policy extracts economic rent is an appropriate criterion for comparing different leasing systems.<sup>3</sup> It is the only measure by which the State and mining companies can receive appropriate returns, without discouraging mine development and employment. Theoretically, with adequate competition and precise information regarding ore location, quality and ultimate production costs, the share represented by economic rent would be offered freely by mining companies for the right to mine a certain tract. In other words, economic rent represents the maximum amount any company could pay for the right to mine. Ideally, under a leasing policy that extracts economic rent, companies will not earn excessive returns on high quality deposits and will not be discouraged from mining low grade deposits.

"High grading" is the practice of mining only higher grade ores and leaving lower grade ores unmined. High grading may occur under several leasing systems, but is most easily illustrated with royalty systems. In this case, the required payments become a cost of producing each ton of ore and can be avoided only by leaving the ore unmined. It is in the interest of

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<sup>3</sup>"Evaluation of Minnesota Mineral Leasing," State of Minnesota, Office of the Legislative Auditor, Program Evaluation Division, June 24, 1982, p. 15.

each mining company to establish a minimum grade of ore which is profitable to mine under a given lease, taking royalty or other payments into account as a cost of production. Having established such a cutoff grade, a company will choose not to mine ores which fall below that grade. One effect of high grading is that companies reduce the scope of their operations, resulting in reduced output, employment and mining revenue for the State. Thus an important measure of the success of any leasing system is the extent to which it avoids the adverse effects of high grading.

There are no existing studies that quantify the potential economic rent from State mineral lands in Alaska. As explained above, economic rent is a theoretical concept that is in large part determined by the quality of mineral deposits on State land, commodity price cycles and the regulatory environment (including State leasing terms). According to Jerry Gallagher, DNR-Director of Mining, there are 48,000 existing claims on State land. If we assume a simple leasing system charging \$1.25 per acre annual rent on 40-acre claims, such a system would generate \$2.4 million in annual State revenue. Obviously, mining activity increases when commodity prices (especially gold) are high and therefore potential leasing revenues from new claims and potential royalty payments for operating mines (economic rent) increases proportionally. We do not have information to make estimates of potential royalty payments and therefore cannot estimate potential economic rent.

#### Reclamation of State Mineral Lands

There is no current statutory or regulatory language in State law that explicitly deals with reclamation of placer mining operations. Placer miners operate under a miscellaneous land use permit, which is issued by DNR in response to the miner's annual placer mining application. The Department of Natural Resources charges miners \$100 to distribute the annual application form to 13 State and federal agencies for appropriate permits. Attachment F contains the Alaska Administrative Code regulations (11 AAC 96.010 - 96.250) concerning reclamation of State mineral lands under a miscellaneous land use permit. These regulations require miners to return the land to as near the original state as possible, (i.e., reclaim their tailings area and recover topsoil so the site can be revegetated). Reclamation requirements are stipulated in each miner's permit and plan of operations. For mining activities on special priority streams, permits are given close scrutiny and higher level reclamation stipulations may be required.

Representative Brown  
September 2, 1987  
Page 8

The commissioners of DNR, ADF&G and DEC have signed an enforcement priorities agreement for placer mining operations which directs field staff to "inspect all mining operations on priority streams and as many mining operations for which time and funding are available on nonpriority streams" (Attachment G). According to Mr. Gallagher, the special priority streams covered in this agreement are inspected monthly by DNR field staff. The DNR staff do not routinely inspect other mining sites for reclamation compliance, though they do conduct inspections in response to citizen or other agency complaints.

The DNR-Division of Mining staff will begin rewriting Chapter 96 of the Alaska Administrative Code to explicitly include placer mining in early 1988. The process should take approximately one year to complete and promulgate. Because a rewrite of the miscellaneous land use regulations involves several other divisions, the process will take a long time. According to Mr. Gallagher, having placer mining regulations explicitly laid out in the code should eventually increase the administrative efficiency of the Mining Division because reclamation stipulations will not have to be included in each individual permit.

\* \* \*

We hope we have provided enough information for your purposes. We have limited our discussion of possible rent and royalty alternatives to those which seemed appropriate to Alaska and workable for placer miners. We have collected a good deal of information on mining issues in our library which we will share upon request. Please call if you have questions or if we can be of further assistance.

Attachments

ATTACHMENT A  
Trustees of Alaska vs State, et al.

Mr. Anderson argues that the specific statute, the Limited Entry Act, controls the general statute, the Exemptions Act, because where two statutes conflict, the specific statute should prevail regardless of whether it was passed prior to the general statute, "unless it appears that the legislature intended to make the general act controlling." *State, Department of Highways v. Green*, 586 P.2d 595, 602 (Alaska 1978), *aff'd sub. nom.*, *823 Square Feet v. State*, 660 P.2d 443 (Alaska 1983). As we conclude from our analysis of the legislature's intent in enacting the relevant statutes, we believe the legislature intended the general Exemptions Act to prevail in this type of case.

### III. CONCLUSION

The expressions of legislative intent in combination with the clear provisions of the 1982 Exemptions Act persuade us that the legislature meant what it said in permitting a parent with past due child support claims to execute against an otherwise exempt limited entry permit. Therefore, we REVERSE the superior court's denial of Mrs. Anderson's motion to execute on Mr. Anderson's limited entry permit for past due child support, and REMAND with instructions to grant her motion.

REVERSED and REMANDED.



legislature's statement of findings and purpose. The legislature found that a disproportionately high percentage of lower-income, single-parent families are headed by women. The difficulties in obtaining child support from noncustodial parents contributes significantly to the hardship of those families...

The legislature also finds that the hardship experienced by children in families who may rely on support from a noncustodial parent

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.

No. S-1142.

Supreme Court of Alaska.

May 1, 1987.

Coalition of environmental, Native, and fishing groups filed action seeking declaration that State's mineral leasing system violated mineral leasing requirement of Alaska Statehood Act in that State did not require payment of either rent or royalties in leases of lands and that State incorrectly construed restrictions to apply only to lands known to contain minerals at time of State selection. The Superior Court of the Third Judicial District, Anchorage, Douglas Serdahely, J., ruled that plaintiffs did not have standing. Plaintiffs appealed. The Supreme Court, Matthews, J., held that: (1) plaintiffs had standing as taxpayer-citizens to maintain action; (2) mineral leasing requirement in Alaska Statehood Act, mandates system under which State must receive rent or royalties for its mining leases; (3) because Alaska's mineral leases do not

should not be a necessary condition that must be endured by those families. Statutory tools have been provided to enable the child support enforcement agency to collect unpaid child support owed by a parent....

Ch. 144, § 1, SLA 1984. One of the statutory tools provided in the 1977 Act was the provision that exemptions under the Exemptions Act do not apply to proceedings to enforce the payment of child support. AS 47.23.250(i).

require rents or royalties, in that value of required annual labor may be credited against rental, leasing laws do not meet mineral leasing requirement of Act; and (4) grant language in first sentence of section of mineral leasing requirement was intended to convey only mineral deposits in selected lands whose mineral character was known at time of selection.

Reversed and remanded with directions.

#### 1. Action ¶13

Basic requirement for standing in Alaska is adversity.

#### 2. Action ¶13

Under interest-injury approach standing, plaintiff must have interest adversely affected by conduct complained of; degree of injury to interest need not be great, and interest may be economic or may be intangible, such as aesthetic or environmental interest.

#### 3. Municipal Corporations ¶987

Taxpayer-citizen status is sufficient basis on which to challenge allegedly illegal government conduct on matters of significant public concern.

#### 4. Municipal Corporations ¶987

Taxpayer-citizen standing cannot be claimed in all cases as matter of right; instead, each case must be examined to determine if several criteria have been met: case in question must be one of public significance and plaintiff must be appropriate in terms of degree of interest, adversity of interest, and ability to competently advocate position asserted.

#### 5. Declaratory Judgment ¶294

Coalition of environmental, Native, and fishing groups had standing as taxpayer-citizens to maintain action for declaratory judgment that State's mineral leasing system violates Alaska Statehood Act because it does not require payment of rent or royalties on mining leases, and that State incorrectly construed lease restrictions in Act to apply only to those lands known to have been mineral in character at time of State selection; case was one of public

significance in that, if plaintiffs prevailed, State would have to change its method of making State land available for mining, and plaintiffs were appropriate parties to bring suit. Alaska Statehood Act, § 6(a, b, i), 48 U.S.C.A. prec. § 21.

#### 6. Mines and Minerals ¶5.2(1)

Congress did not intend to preclude all litigation concerning meaning of mineral lease section of Alaska Statehood Act by enacting forfeiture proviso applicable when lands or minerals are disposed of contrary to provisions section; Congress intended only that United States Attorney General could bring forfeiture proceedings and that such proceedings could be brought only in United States District Court for the District of Alaska. Alaska Statehood Act, § 6(a, b, i), 48 U.S.C.A. prec. § 21.

#### 7. Declaratory Judgment ¶296

Taxpayer-citizens could maintain declaratory judgment action for interpretation of mineral lease section of Alaska Statehood Act. Alaska Statehood Act, § 6(i), 48 U.S.C.A. prec. § 21.

#### 8. Public Lands ¶62

Primary purpose of grant of right to Alaska to select 103,350,000 acres of land from United States under Alaska Statehood Act was to ensure economic and social well-being of new State. Alaska Statehood Act, § 6(a, b), 48 U.S.C.A. prec. § 21.

#### 9. Mines and Minerals ¶5.2(1)

Mineral leasing restriction in Alaska Statehood Act was intended to further goal of State revenue production. Alaska Statehood Act, § 6(i), 48 U.S.C.A. prec. § 21.

#### 10. Mines and Minerals ¶5.1(1)

Federal Mineral Leasing Act was passed rejecting location system for certain minerals in order to provide revenue to United States. Mineral Lands Leasing Act, §§ 1-25, 30 U.S.C.A. §§ 181-263.

#### 11. Mines and Minerals ¶5.2(1)

Mineral leasing requirement in Alaska Statehood Act, considered in context of School Lands Act and Mineral Leasing Act, other statehood mineral grants, and mineral leasing systems in other states, man-

MINERAL LEASING ACT LIBRARY

dates system under which State must receive rent or royalties for its mining leases. 43 U.S.C.A. § 870(b); Alaska Statehood Act, § 6(i), 48 U.S.C.A. prec. § 21; Mineral Lands Leasing Act, §§ 1-25, 30 U.S.C.A. §§ 181-263.

#### 12. Mines and Minerals ⇐5.2(1)

Because Alaska's mineral leases do not require rents or royalties, in that value of required annual labor may be credited against rental, State hard rock mineral leasing laws do not meet mineral leasing requirement of Alaska Statehood Act. Alaska Statehood Act, § 6(i), 48 U.S.C.A. prec. § 21; AS 38.05.185, 38.05.205, 38.05-205(b), 38.05.210.

#### 13. Mines and Minerals ⇐5.2(1)

Grant language in first sentence of section of mineral leasing requirement of Alaska Statehood Act was intended to convey only mineral deposits in selected lands whose mineral character was known at time of selection. Alaska Statehood Act, § 6(i), 48 U.S.C.A. prec. § 21.

Eric Smith and Robert W. Adler, Anchorage, for plaintiffs/appellants.

Robert M. Maynard and Mark P. Worcester, Asst. Attys. Gen., Anchorage, Harold M. Brown, Atty. Gen., Juneau, for defendant/appellee State of Alaska, Alaska Dept. of Natural Resources, and Esther Wunnicke, Com'r, Dept. of Natural Resources.

James N. Reeves, Bogle & Gates, Anchorage, for defendant/appellee Alaska Miners Ass'n.

Ronald A. Zumbrun, Robin L. Rivett, and James S. Burling, Pacific Legal Foundation, Sacramento, Cal., and Michael B. Markham, Borough Atty., Fairbanks, for defendant/appellee Fairbanks North Star Borough.

Thomas R. Wickwire, Fairbanks, for defendant/appellee Joseph E. Vogler.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS, COMPTON and MOORE, JJ.

### OPINION

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.<sup>1</sup>

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 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

[1] "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, 88 S.Ct. 1942, 1952-53, 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.*

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.

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-

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, 97 S.Ct. 2943, 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.

[2] 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 Court 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.<sup>2</sup> We have, however, explic-

*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 challenging a bond issue); *Suber v. Alaska State Bond Committee*, 414 P.2d 546 (Alaska 1966) (taxpayer suit

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itly 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 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 vindicat-

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).

ed in *Sierra Club [v. Morton]*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972) ] and [*United States v.*] *SCRAP* [,412 U.S. 669, 93 S.Ct. 2405, 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, 104 S.Ct. 45, 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

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).

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.

[3] 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,<sup>3</sup> or on the basis that the plaintiff

was not a taxpayer.<sup>4</sup> However, *Lewis* and *Carpenter* suggested, without deciding, that taxpayer-citizen standing may be denied even in cases of public significance under certain circumstances.<sup>5</sup>

[4] 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.<sup>6</sup> On 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 common law questions may also be very important.<sup>7</sup> 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.<sup>8</sup> Further, standing may be denied

3. *Hoblit*, 678 P.2d 1337.

4. *Greater Anchorage Area Borough v. Porter and 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 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. Finlison*, 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.

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, 88 S.Ct. 1942, 1952, 20 L.Ed.2d 947, 962 (1968) ("federal courts will not entertain friendly suits ... or those which are feigned or collusive").

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if the plaintiff appears to be incapable, for economic or other reasons, of competently advocating the position it has asserted.<sup>9</sup>

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

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

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.

[5] 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.*

[6] There has been much litigation concerning the meaning and scope of various statehood act land grants and their restrictions.<sup>10</sup> There have been frequent questions of ownership of the granted lands as between private or governmental contest-

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").

10. *E.g.*, *Boyce v. Pima County*, 24 Ariz. 259, 208 P. 419 (1922); *Jensen v. Dinehart*, 645 P.2d 32 (Utah 1982); *cf.* *State v. University of Alaska*, 624 P.2d 807 (Alaska 1981).

ants.<sup>11</sup> 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. 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.

[7] 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.<sup>12</sup> This clause has not prevented judicial interpretation of the School Lands Act in non-forfeiture proceedings.<sup>13</sup> 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 summa-

11. *E.g., Rodgers v. Berger*, 55 Ariz. 433, 103 P.2d 266 (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*, 125 Mont. 258, 234 P.2d 452 (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, 87 S.Ct. 584, 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*, 61 N.M. 374, 301 P.2d 317 (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*, 30 Wyo. 433, 222 P. 3 (1924) (suit between governor and trustees concerning land granted and confirmed by act of admission for university purposes).

12. The proviso in the School Lands Act states: 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. 333.

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

rized 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 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.<sup>14</sup>

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.<sup>15</sup> 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 § 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.<sup>16</sup>

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 com-

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).

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).

petitive and preference right lessees must pay an annual rental fee<sup>17</sup> and a production royalty, which is a specified percentage of the gross value of the leased substance produced. 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.<sup>18</sup> In *Lewis*, we discussed the School Lands Act in another context:

In 1955, the Territory of Alaska, through its legislature, provided for a constitutional convention. Elected del-

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.

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

egates 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 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)].

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.

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.<sup>19</sup> *Andrus v. Utah*, 446 U.S. 500, 508, 100 S.Ct. 1803, 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, 67 S.Ct. at 1321, 91 L.Ed. at 1593. Third, in *United States v. Sweet*, 245 U.S. 563, 572-73, 38 S.Ct. 193,

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, 67 S.Ct. 1319, 1321, 91 L.Ed. 1590, 1593 (1947).

20. And as used in the Alaska Statehood Act § 6(i). See part III E of this opinion, *infra* p. 339.

21. The School Lands Act did not completely eliminate litigation of the question whether lands were of known mineral character at the

195, 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<sup>20</sup> is a term of art, and refers to the time that the mineral character of the lands was appreciated, not to the ultimately discovered nature of the lands.<sup>21</sup> See also Slaughter Memorandum *infra* p. 340.

#### 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.<sup>22</sup>

However, the framers also sought to preserve key elements of the existing location-patent system should Congress permit.

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.

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(b)(3). 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*

[8] 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, 89 S.Ct. 990, 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, 101 S.Ct. 243, 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.

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 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

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).<sup>23</sup>*

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.

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

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

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 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 leas-*

[9, 10] The leasing restriction<sup>24</sup> in section 6(i) was intended to further the goal of state revenue production. As we have discussed, the restriction was taken from the 1927 School Lands 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.<sup>25</sup> The School Lands Act leasing requirement was expressly intended to be productive of pro-

*ing 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 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").

ceeds, rents, and royalties, and congressional history indicates that the same result was intended in Alaska.<sup>26</sup> Further, in congressional hearings, the section 6(i) leasing requirement was equated with the "leasing procedures as provided under the Leasing Act of 1920."<sup>27</sup> 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.

[11] 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 man-

ner 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.

*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,<sup>28</sup> and mineral leasing systems in other states, mandates a system under which the state must receive rent or royalties for its mining leases.<sup>29</sup>

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 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).

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 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 chooses, establish priorities that will tend to keep the surface and mineral rights in the same hands and can, in general, fit the provisions of its mineral leasing system to whatever may be its concepts of the public interest.

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.

[12] Although Alaska law requires mining leases for extracting hardrock minerals on those mineral lands thought to be subject to section 6(i),<sup>30</sup> 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 § 7.2, at 102 (1st ed. 1983); *Chambers v. Harrington*, 111 U.S. 350, 353, 4 S.Ct. 428, 430, 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.<sup>31</sup> 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

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.

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

in selected lands are conveyed regardless of when the deposit's existence is first known. The term "mineral lands" in 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.

[13] 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

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).

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)...<sup>32</sup>

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

<sup>32</sup> 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.

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

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 U.S.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).

(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

33. For convenience, we have referred to the

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. 341, 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.<sup>33</sup>

#### CONCLUSION

We conclude that appellants have standing to maintain this declaratory judgment

relevant event as the time of selection. Whether

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.<sup>34</sup>



Sang SUH, Appellant,

v.

PINGO CORPORATION, Employer, Pacific Marine Insurance Company, Mukluk Freight and Alaska Pacific Assurance Co./INA, Appellees.

Joseph JERKOVICH, Appellant,

v.

PINGO CORPORATION, Employer, Pacific Marine Insurance Company, Mukluk Freight and Alaska Pacific Assurance Co./INA, Appellees.

Nos. S-1247, S-1259.

Supreme Court of Alaska.

May 1, 1987.

Claimants sought declaratory judgment as to retroactive application of deci-

er 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

tion in *Grant* with respect to calculation of permanent partial disability benefits. The Superior Court, Third Judicial District, Anchorage, Milton Souter, J., entered summary judgment against the claimants, holding that decision in *Grant* applied prospectively only, and claimants appealed. The Supreme Court, Moore, J., held that: (1) decision in *Grant*, entitling a claimant with both scheduled and unscheduled injuries to separate awards of permanent partial disability provided loss-of-earning capacity resulting from scheduled disability is separated from loss-of-earning capacity resulting from unscheduled injury, applies retroactively to controverted cases in which the award issues or the payments commence on or after date of decision and also applies retroactively to all cases, whether or not controverted, in which an appeal from a compensation order was pending on the date of decision, provided the point has been argued at hearing so as to preserve it for appeal, and (2) as to claimants who received compensation for their disabilities prior to date of decision, and who did not argue point at hearing so as to preserve point on appeal, decision in *Grant* was not retroactive.

Affirmed.

Matthews, J., dissented and filed opinion in which Rabinowitz, C.J., joined.

#### 1. Courts ⇐100(1)

Decision in *Grant*, entitling a claimant with both scheduled and unscheduled injuries to separate awards of permanent partial disability provided loss-of-earning capacity resulting from scheduled disability is separated from loss-of-earning capacity resulting from unscheduled injury, applies retroactively to controverted cases in which the award issues or the payments com-

lands to qualify them as mineral lands. We also intimate no view on this question as it is not before us.

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

ATTACHMENT B  
"Court Decision May Hold Serious Consequences  
for Placer Mining"



### LAWYER'S POINT OF VIEW

By RICK JOHANNSEN  
Attorney at Law

## Court decision may hold serious consequences for placer mining

The Alaska Supreme Court recently issued a decision in *State v. Stedman* that may have serious consequences for placer mining on lands owned by the state. In this litigation the state has been asserting its claim since 1963. The state's claim is based on the Alaska Native and Inuit Claims Settlement Act of 1971, which provided for the settlement of all Native and Inuit claims to land. The state's claim is based on the fact that the state is the owner of all lands not included in the settlement. The state's claim is based on the fact that the state is the owner of all lands not included in the settlement.

Mineral mining claims or locations are not on "mineral lands."

Although the state's overall mining system is of public importance, the state's decision as to whether or not rent or royalty must be paid on a particular claim or location may be significant enough to allow a court challenge.

If a mining claim or location is on "mineral lands," the court has ruled that some rent and/or royalty must be paid to the state by the court. Little guidance, however, as to how much rent or royalty will be legally sufficient.

The court's decision raises more questions than it answers and statutory and regulatory provisions may be amended to deal with these uncertainties. Unfortunately, the court's decision creates many difficult questions that additional litigation may not be avoidable even after appropriate statutory and regulatory changes have been made.

on state land as long as that land was not known to be mineral in character at the time of state selection.

In addition, although the state has traditionally retained ownership of minerals when state land is conveyed to municipalities, the court's decision means that municipalities may currently have a right to receive minerals with municipal land grants as long as the land selected by the municipality is not "mineral land."

This recent Alaska Supreme Court decision raises more questions than it answers and statutory and regulatory provisions may be amended to deal with these uncertainties. Unfortunately, the court's decision creates many difficult questions that additional litigation may not be avoidable even after appropriate statutory and regulatory changes have been made.

leasing system violates the Alaska Statehood Act because it does not provide for the payment of rent or royalty to the state by those who mine hardrock minerals on state land.

Undermining state statutes hardrock minerals on state land are mineral lands. The court's decision in *State v. Stedman* appears to hold that all mineral lands are owned by the state. This decision may have serious consequences for placer mining on lands owned by the state.

only under certain circumstances. The state has determined that the time has come to re-evaluate its state from the federal government. As a result, the state has decided to re-evaluate its state from the federal government.

even as the state is losing by not setting fees or royalties for public significance. The court's decision may have serious consequences for placer mining on lands owned by the state.

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ATTACHMENT C  
Report on Selected Mining Leasing Systems In  
the United States and Canada  
Department of Natural Resources  
January 1981

REPORT ON SELECTED MINING LEASE SYSTEMS  
IN THE UNITED STATES AND CANADA

Prepared by:

Division of Research and Development  
Department of Natural Resources  
State of Alaska  
323 East 4th Avenue  
Anchorage, Alaska 99501

January 1981

*ACKNOWLEDGEMENT*

The Alaska Department of Natural Resources gratefully acknowledges the assistance of land administrators in the western states and Canada, without which this report would not have been possible.

## ABSTRACT

The State of Alaska is in the process of developing a leasing system for hardrock minerals on the 104 million acres of uplands it owns. (A leasing system is already in effect for Alaska's tidelands and submerged lands.) As part of that process, the Alaska Department of Natural Resources, Division of Research and Development, conducted the following study of mineral leasing alternatives used by other public land owners. Mineral leasing in sixteen western states and four Canadian provinces, as well as on federal acquired lands and Alaska's own submerged lands, is described.

Three basic types of leasing systems are in use: mining location with subsequent conversion to lease, noncompetitive leasing through preference-right conversion of prospecting permits, and direct leasing through an application process or competitive bidding. Three states and three provinces use location as a first step in leasing. In those three states, miners are permitted to stake claims with the right to hold them from 60 days to two years before converting to a lease agreement. In one province miners must convert their claims to leases within ten years; in the other two they may hold their claims indefinitely and may produce limited amounts of minerals without a lease. In nine states and two provinces, as well as on federal acquired lands and Alaska's submerged lands, miners apply for prospecting permits as a first step to leasing. On state lands and federal acquired lands, prospecting permits are for terms ranging from six months to ten years. In Alberta and the Northwest Territories, the terms are three to five years. Six states allow miners to apply directly for a lease without a prior claim or prospecting permit. In 12 states and on federal acquired lands, a competitive lease sale may also be held.

In the western states, lease terms range from three to 99 years with the most common duration being 10 to 20 years. The Canadian lease terms are 21 years.

Lease royalty rates are individually negotiated in some states; in other states and in Alberta, they range from four percent of net production to 25 percent of the gross, with the most set at five to ten percent. Three Canadian provinces collect lease royalties as a tax on profits, and all but four states impose at least one special tax on the mining industry.

The following pages contain a brief definition of common lease elements: mining location, prospecting permits, competitive leasing, noncompetitive leasing, term, filing fees, rental rates, royalty rates, bonuses, and bonding. Following the definitions is a summary of selected mineral leasing systems and a comparative chart of mineral lease activity.

## COMMON LEASE ELEMENTS AND TERMS

### MINING LOCATION

Under a mining location system a miner is allowed to locate a claim on state-owned lands when a mineral deposit is found. The miner stakes the corners of his claim, which typically does not exceed 40 acres, and records the location. The process is similar to that under the 1872 Mining Law. Under the state systems, however, such claim staking is preliminary to a lease agreement and never leads to a patent.

### PROSPECTING PERMITS

A prospecting permit is issued prior to lease. It generally allows exclusive right to explore a specified tract of land and, in the event valuable minerals are discovered, gives the prospector the right to lease.

### COMPETITIVE LEASING

Competitive lease awards are generally made to the bidder submitting the highest bid by means of sealed or oral bid at a public sale. Lands subject to competitive leasing may be categorized as such for a number of reasons: 1) competitive interest; 2) physical or geologic evidence indicating potential for production; 3) actual production in the vicinity; and 4) classification as "competitive" for some reason other than potential for production.

### NONCOMPETITIVE LEASING

Lands not classified for competitive leasing are leased through a noncompetitive system. There are several methods by which such sales are made: 1) mining location and subsequent conversion to a lease, 2) prospecting permit with a preference right to lease, 3) a simultaneous open filing period after which a lottery is held in case of multiple applications for the same area, and 4) over-the-counter on a first-come, first-served basis.

### DURATION OF LEASE

Most leases have ten to twenty year primary terms. However, if commercial production is obtained during the primary term, the term of the lease will extend as long thereafter as commercial production continues.

### FILING FEES

Filing fees are a charge intended to cover part of the administrative costs in connection with processing a mineral lease.

### RENTAL RATES

Leases generally require an annual rental payable in advance. The rental rate is assessed at a specific amount per acre per year. Some states require an escalating rental.

### ROYALTY RATES

The mineral royalty is a percentage of the value of minerals produced from a mine to be paid to the lessor by the lessee. Royalty schedules vary considerably. Depending on the commodity and the state, royalties may be assessed in one of the following ways: 1) on the basis of volume of minerals mined and removed from the leased premise, 2) on the basis of weight of minerals mined and removed, and 3) as a percentage of the gross or net value of the minerals produced from the leased premises.

## BONUS

A bonus is a cash payment, in addition to rental and royalty, made by the successful bidder for a mineral lease.

## BONDING

The agencies administering mineral rights generally require a miner to post a bond commensurate with the amount it might take to reclaim the surface and restore improvements in the event of default by the lessee or permittee.

## SPECIFIC REQUIREMENTS OF SELECTED MINERAL LEASE SYSTEMS

Although all mineral leasing systems studied follow traditional competitive or noncompetitive patterns and show obvious similarities, there is considerable variation in the details of each system. Following are specific leasing requirements for Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, Alaska's submerged lands, federal acquired lands, Alberta, British Columbia, Northwest Territories, and Yukon Territory. This information is current as of January 1981 and was acquired by telephone interview and literature survey during December 1980 and January 1981. For more details on specific mineral disposal systems, please contact the appropriate governing agency.

### ARIZONA

Arizona has 10 million acres of subsurface holdings which are administered by the State Land Department. There is a little-used provision for locating claims by staking up to twenty acres, posting, and recording notice. To hold the claim one must perform validation work. The locator must provide proof of a valuable mineral discovery and convert the claim or claims to lease within 90 days.

There is also a little-used provision for competitive lease sales. More often miners acquire mineral rights by a prospecting permit which is granted to the first qualified applicant. A prospecting permit is for not more than 640 acres and the duration is five years with no renewal. However, a permittee can reapply for a new permit. A rental of \$2 per acre is charged for the first two-year term and \$1 per acre per year for years three through five. A bond of at least \$1,000 for less than 160-acre holdings and \$2,000 for more than 160-acre holdings required for each permittee. A work obligation of at least \$10 per acre per year during each of the first two years and \$20 per acre per year during each of the last three years is required. Upon proof of valuable discovery, the permit can be converted to a lease, which is for a renewable term of 20 years. The rental is \$15 per 20 acres per year, plus a royalty charge of 5% of the net. A plan of operations is required and upon suspension of work the lease may be revoked. A lease bond as well as reclamation may be required.

Arizona uses an ad valorem property tax for the mineral industry; it has no severance or production taxes. Mines, smelters, railroads, mills, and lumber are assessed at 60% of market value. A special tax on the mineral industry was enacted in 1967. A tax of 1.5% of gross proceeds or gross income was levied on every person in the state in the business of mining, smelting, quarrying, or producing for sale or commercial use any oil, natural gas, limestone, sand, gravel, copper, gold, silver, or other mineral product, compound, or combination of mineral products. Arizona also levies a mining privilege tax at the rate of 1% of the gross receipts.

In 1980 Arizona had a total of 664 leases covering 29,698 acres. There were few claims held, but the low number is probably because claims must be converted to leases within 90 days. However, there were 502 prospecting permits issued covering 174,000 acres. In 1980 the state received \$191,500 in rentals and, because 25 of the leases are producing, received \$9,061,000 in royalties. Most of the royalty monies come from four large copper mines. Arizona state lands support more mining than those of any other state researched.

### CALIFORNIA

California has four million acres of subsurface holdings which are administered by the State Land Department. The method for acquiring mineral rights to those lands is by prospecting permit and lease. If the area is known to be mineralized the area is disposed of by competitive lease. Otherwise, a prospecting permit is granted to the first qualified applicant. The size limitation is 640 acres and the duration is two years with a single extension allowed. A rental of \$1 per acre per year is charged. A negotiated performance bond may also be required. There is also a work obligation which requires the miner to begin work within six months and to work at least 160 person/days in the first year and 320 person/days in the second year. Upon proof of a valuable mineral discovery the permit can be converted to a lease which is for a term of 20

years, with a possible extension not to exceed 10 years. However, automatic extension will be granted upon production. The rental fee is a minimum of \$1 per acre per year with a negotiated royalty of not less than 10% of the gross. Negotiated reclamation requirements and lease bonds may be required. Leasing of submerged lands is handled in a similar manner, except that there is an acreage limitation of 160 acres and all such leases must be submitted to and approved by the attorney general of California.

An ad valorem tax of 1% of market value or 4% of assessed value is charged on all mines in California. This is the sole mining tax. However, changing to a severance tax system is under consideration.

By the end of 1980 California had issued a total of three leases covering 20,000 acres and five permits. Approximately \$20,000 was collected in 1980 from rentals. With one operating mine, \$230,000 was collected in royalties. There is little mining activity on California state lands.

## COLORADO

Colorado has four million acres of subsurface lands which are administered by the State Board of Land Commissioners. Colorado has a seldom-used provision for locating claims by posting notice, notifying the state, and obtaining a lease within 60 days. The claim size is not fixed, but is generally 640 acres. The typical method of acquiring mineral rights is by competitive leases affecting quarter-quarter sections or multiples thereof as determined by the Board. Mining leases are for a term of 10 years and are renewable. The rental is \$1 per acre per year for years one through five, \$6 per acre for year six, \$7 per acre for year seven, \$8 per acre for year eight, \$9 per acre for year nine, and \$10 per acre for year ten. There is a sliding scale royalty of 4% of gross on less than \$50 per ton, 6% gross on \$50 to \$100 per ton, 8% gross on \$100 to \$150 per ton, and 10% gross on anything valued at more than \$150 per ton. There is no work obligation. However, diligence is required in order to renew the lease agreement. Both a plan of operations and reclamation are stipulations of the lease.

Colorado has a severance tax of 2.25% of gross on all mineral incomes greater than \$11 million. There is also an ad valorem tax of 25% of gross proceeds.

Colorado has 286,312 acres under lease and issues approximately two to three new leases per month. There are approximately 40 active mines bringing in \$213,831 in royalties in 1980. Colorado has also collected \$236,040 in rentals and \$242,525 in bonuses. Of the bonus monies \$200,000 was for uranium. Recent activity on Colorado state lands has been due to an increased interest in uranium.

## IDAHO

Idaho has 3.6 million acres of subsurface holdings which are administered by the Board of Land Commissioners. Idaho has a provision for locating 20-acre mining claims by discovery, monumenting the corners, posting notice, and recording them with the County and State. Assessment work and recording proof of labor are also required. The claims must be converted to a lease after two years. Competitive lease sales are also held. Lease sizes are up to 640 acres and are for a duration of ten years. Renewals are allowed. Lease rental is \$1 per acre per year with a minimum of \$160. The rental can be credited against the royalty. Royalty is negotiated on an individual basis. The only work obligation is that the miner begin work within ten years. A plan of operations is required but there is no penalty for suspension of work. Reclamation is required and a lease bond of \$5,000 per lease or \$50,000 statewide must be posted. Idaho imposes a mining license tax of 1% of the net value of ore mined.

Recent mining activity on state lands has been limited to small operations. By the end of 1980 Idaho had issued 230 mineral leases and miners had staked 723 claims. The period 1979-1980 saw a sudden increase in the number of claims staked. This is probably due to the increase in silver and gold prices. Idaho received \$60,000 in rentals in 1980. There are five small mines just beginning production and during 1980 Idaho received royalties from one, totaling \$2,500. Mining on Idaho state lands is active but limited to small operators.

## MONTANA

Montana has 6.2 million acres of subsurface holdings which are administered by the Board of Land Commissioners. There is no provision for claim staking or prospecting permits. Most exploration rights are acquired by a lease which may be issued to the first qualified applicant. The lease size is 640 acres and the duration is 10 years. Leases can be renewed. The rental fee is \$1 per acre per year and the royalty is 5% of the gross proceeds or 10% of the net return, whichever is greater. Although a plan of operations is not required, there is a reclamation requirement. A lease bond of \$1,000 per lease must be posted.

Montana places three special taxes on the mining industry. There is a special tax amounting to \$25 plus 5% of the gross proceeds in excess of \$5,000, a license tax equaling \$1 plus a gross production levy, and an ad valorem tax of 3% of gross proceeds.

Montana has issued 44 leases, 16 of them in the last year. However, in April of 1980 a freeze was put on the issuance of leases. Lease applications are pending while new regulations are being written. The 1980 revenues, however, came to \$17,550 in rentals and, with one producing mine, \$1,005 in royalties.

## NEBRASKA

Nebraska has 3.5 million acres of subsurface land which is administered by the Board of Education Land and Funds. Nebraska does not have provisions for either staking of claims or prospecting permits, but leases for three years are obtained by submitting an application, and then participating in oral bidding at a public auction which is held after advertising the sale. Rental is a minimum of 50 cents per acre per year, and the royalty is 5%-25% of the gross depending on the specific mineral. There is no lease work obligation. However, a reclamation requirement is negotiated. A bond of \$1,000 per lease must be posted. Nebraska does not levy any special taxes on the mineral industry. Nebraska has issued no leases for minerals on state lands.

## NEVADA

Nevada has .13 million acres of subsurface land which is administered by the State Division of Lands. Like Nebraska, Nevada does not have provisions for either claim staking or prospecting permits. Instead, one must go directly into a lease agreement. Competitive lease sales may be held. Almost all of the terms of the lease are negotiated; the size, duration, work obligation, royalty, and lease bond. A lease rental is set at \$1 per acre per year and reclamation will be required. Nevada places two taxes on the mining industry: a net proceeds tax and an equipment improvement tax. There have been no leases issued.

## NEW MEXICO

New Mexico has 13.3 million acres of subsurface lands which are administered by the Commissioner of Public Lands. New Mexico has no provision for claim staking or prospecting permits. Exploration rights are acquired by lease and the Commissioner reserves the right to issue the lease to the party offering the highest bonus bid by oral or sealed bids at an advertised sale. Most leases are issued competitively. Noncompetitively, the size of the lease is negotiated and is often restricted by the parcel size of the trust lands under consideration. The duration of the lease is fifteen years with no renewal except by production. The rental fee is 5 cents per acre per year for years one through three, 50 cents per acre per year for years four through five, and \$1.50 per acre per year from year six until discovery or year ten, whichever is first. After discovery the rental is \$3.00 per acre per year. If the lessee fails to make a discovery during the first ten years of the lease, he will pay \$10 per acre per year rental plus an advanced royalty computed as follows: for the 11th year \$10 per acre, for the 12th year \$20 per acre, for the 13th year \$30 per acre, for the 14th year \$40 per acre, and for the 15th year \$50 per acre. These fees are credited against the base royalty. The royalty charged is set at the time of lease sale. No plan of operations is required and there are no reclamation requirements. There are three taxes placed on the mining industry in New Mexico. They are a severance tax on gross proceeds, a resource excise tax, and an ad valorem tax.

New Mexico has issued 2,000 leases by competitive bid. There have been no lease sales since April of 1980. The state land commissioner is assessing the mineral potential of state lands. During 1978-1979, however, \$453,147 was collected in bonus bids, \$749,000 in rentals, and \$141,000 in royalties from two uranium-producing leases.

#### NORTH DAKOTA

North Dakota has 2.6 million acres of subsurface lands which are administered by the Board of University and School Lands. There are no provisions for staking claims and although the Board regulations provide for a one-year prospecting permit on a maximum of 640 acres, this method is very seldom used because conversion of a permit to a lease is not assured. The prospecting permit, however, does have a one-year renewal and costs \$10 per permit plus \$25 per drill hole. A permit work obligation and bond may be required. The lease agreement is obtained competitively and provides for a maximum lease size of 640 acres and a duration of 10 years. The lease may be renewed. The lease rental is \$1 per acre per year with no set royalty. There is a reclamation requirement and there may be a negotiated work obligation. However, there is no need to post a lease bond. There are also no special taxes on the mining industry in North Dakota. There have been no prospecting permits or leases issued.

#### OKLAHOMA

Oklahoma has 1.5 million acres of subsurface holdings which are administered by the Commissioner of Lands. Oklahoma has no provisions for the staking of claims. One must obtain a prospecting permit which carries with it a preference right to a lease if the prospector chooses to match the highest bid at a lease sale. The prospecting permit is for a duration of six months with six-month extensions. The rental fee is \$1 per acre per year and a permit bond of \$12,500 per permit is required. Both the prospecting permit and the lease have no limit to the amount of acreage allowed. The lease duration is for five years and the lease is only renewable upon production. The rental fee is \$1 per acre per year and the royalty is 7% of the net proceeds. A plan of operations is not required but there is a reclamation requirement. A lease bond of \$12,500 must be posted. Oklahoma places one mining tax on the mining industry, a severance tax of .75% of the gross proceeds. Oklahoma has issued no prospecting permits or leases on state lands.

#### OREGON

Oregon has 3 million acres of subsurface holdings which are administered by the Division of State Lands. It has no provisions for the staking of claims and requires a prospecting permit as a first step toward leasing. However, the prospecting permit has no preferential right to lease. There is no limit to the acreage allowed under one permit but the duration is for three years and the lease may be renewed if diligence is shown. The permit fees are 50 cents per acre per year for years one through three and \$5 per acre per year thereafter. There is no permit work obligation except for renewal. A permit bond is required and is usually \$1,000 per permit. The lease size is 640 acres and can be held for 10 years with extensions up to 50 years. After that time the lease can only be held by production. The lease rental is \$1 per acre per year and the royalty is 5% of the gross at the mine mouth. There is also a work obligation of \$1 per acre for the first year, \$2 per acre for the second year, and \$3 per acre for the third year. If work is suspended for more than 30 days without notifying the Division of State Lands, the miner may lose his lease. A lease bond is required and the amount is negotiable. Reclamation will also be required. Oregon places no special taxes on the mining industry. Oregon has issued no leases. However, 18 prospecting permits have been issued, 11 of them in the last year. Rentals collected in 1980 equaled \$23,392.

#### SOUTH DAKOTA

South Dakota has 5.2 million acres of subsurface lands which are administered by the Commissioner of School and Public Lands. The state has no provisions for claim staking but does issue prospecting permits covering a maximum of 640 acres, for a term of one year with a provision for two extensions and a rental of 50 cents per acre per year. A tentative schedule of exploration must be submitted but a permit bond is not required. After having been issued a prospecting permit, a miner can obtain a lease for a period of five

years. The lease can be extended through diligence. The rental is \$1 per acre per year and the royalty is negotiated as a percent of the gross. There is a lease work obligation and a reclamation requirement. A lease bond must be posted but the amount is negotiated. South Dakota has a mineral license tax of 4% of the net profits greater than \$100,000. There have been no leases issued but there are 70,000 acres held under permit for uranium prospecting.

## TEXAS

Texas has seven million acres of subsurface holdings which are administered by the Office of Land Resources. Texas has no provisions for claim staking but does provide for competitive leasing and prospecting permits as an optional first step to leasing. The maximum size of prospecting permits is 704 acres but the size generally used is 640 acres. The permit duration is for one year and the lease allows a four-year extension. The rental fee is 50 cents per acre per year. Quarterly reports of diligence must be filed. There is no permit bond required. The lease size can be no larger than that of the permit. Its duration is for five years and it can only be extended through production. The lease rental fee is negotiated but is usually \$1 per acre per year and the royalty is 6.25% of the gross. There is no work obligation except reasonable development. A plan of operations is required as well as general reclamation. There is no lease bond. Texas has no special taxes on the mining industry.

## UTAH

Utah has four million acres of subsurface holdings which are administered by the State Land Board. The state does not have provisions for the staking of claims or obtaining prospecting permits but leases are issued to the first qualified applicant unless the lands are recently acquired by the state or a previous lease has been terminated, in which case sealed bids are received at an advertised sale. Leases can include a maximum of 2,560 acres and are issued for a term of ten years, renewable only by production. There is a rental of \$1 per acre per year. The royalty amount depends on the specific mineral but is usually 4% of the gross value. There is no work obligation although a plan of operations may be required. There are reclamation requirements and a miner must post a bond of \$20,000 to \$25,000 any time the surface is disturbed. Utah places two taxes on the mining industry: a severance tax which equals 2% of the gross proceeds and a mining occupation tax which equals 1% of the gross in excess of \$50,000.

There are currently 342,890 acres under lease with 15,854 acres under production. Bonuses and rentals in 1979-80 totalled \$239,000 and royalties equalled \$344,171. However, there has not been much recent exploration on state lands.

## WASHINGTON

Washington has 4.2 million acres of subsurface holdings which are administered by the Department of Natural Resources, Division of Lands. The state has no provisions for claim staking but does issue prospecting permits as a first step to leasing. The permits vary in size from 40 to 640 acres. The duration of a permit is two years and the permit can be renewed for a second two-year term. However, the second term is deducted from the twenty-year lease. The permit rental is 25 cents per acre per year for the first two years, 50 cents per acre per year for the third and fourth years. There is a work obligation of \$1.25 per acre per year for the first four years and \$2.50 per acre per year thereafter. Although a plan of operations is not required, reclamation is mandatory. A lease bond of \$500 per lease must be posted and the royalty charged is 4% of the net smelter return. The state of Washington also imposes a business and occupation tax which is .44% of the gross income. A leasehold tax is also charged.

Washington has issued 300 prospecting permits and 200 leases. There are three active mines which each return approximately \$1,000 to the state annually. In 1980 the state also collected \$97,000 in rentals. Leases are often assigned to other parties and little new exploration or development is going on.

## WYOMING

Wyoming has 4.2 million acres of subsurface holdings which are administered by the Board of Land Commissioners. There are no provisions for the staking of claims or the issuance of prospecting permits. Exploration rights are issued through leases of up to 1,280 acres. They are awarded to the first qualified applicant for a term of ten years, with a rental of 50 cents per acre per year through year five or discovery, whichever is first. After discovery or five years, the rental is \$1 per acre per year, and a minimum of 5% of the gross proceeds is charged. A bond of \$5,000 per lease must be posted as well. Wyoming also levies a mining excise tax of 2% of the gross proceeds.

Wyoming has issued 2,354 uranium leases; 17 gold, silver, and copper leases; 3 iron leases; and 8 jade leases. Wyoming is revising its regulations and so there has been a moratorium on leasing since February 1980. There are 30 to 40 applications pending.

## ALASKA: TIDE AND SUBMERGED LANDS

Alaska has 60 to 70 million acres of tidelands and submerged lands. Claim staking is not allowed on these lands. However, the state does allow for competitive lease sales and will issue prospecting permits as a first step towards leasing. A prospecting permit is awarded for 10 years and may be renewed. Its size is 2,560 acres. Neither a work obligation nor a permit bond is required. The permit rental fee is 50 cents per acre per year for the first two years and \$1 per acre per year thereafter. The maximum lease size is the same as that of the prospecting permit: 2,560 acres and the lease duration is for up to 55 years and is renewable. The rental is \$1 per acre per year and no royalty is charged. Work expenses can be credited against the rental fees. A lease work obligation and a plan of operations may be required. However, there is no reclamation requirement. Alaska levies a 7% mining license tax on net proceeds after the first \$100,000.

Alaska has issued eight leases and 74 prospecting permits. However, because changes are being considered at the present leasing system, action on submerged lands has been frozen since 1975. There are 33 prospecting permits pending conversion to lease and 348 prospecting permits pending authorization. During 1980 approximately \$9,200 was received in rentals.

## FEDERAL GOVERNMENT ACQUIRED LANDS

Under special circumstances such as purchase, condemnation, or donation, Federal agencies may acquire title to lands from a private owner. The federal government has 52 million acres of acquired lands. Claim staking is not allowed on these lands. However, the federal government does issue prospecting permits and leases. A prospecting permit is awarded for a size of 2,560 acres and for a duration of two years with one extension. There is no work obligation. A bond for a minimum of \$10,000 must be posted for each permit. The rental fee is \$20 for each permit plus 25 cents per acre per year. Leases may be issued competitively. Their size is the same as the permit size and they are issued for 20 years with extensions of successive 10-year periods. The rental fee is \$1 per acre per year with a \$20 minimum. A lease work obligation as well as a plan of operations is required. There is a reclamation requirement as well as a bond requirement of a minimum of \$5,000 per lease. The royalty payments are negotiated.

## ALBERTA

Alberta has 130 million acres of subsurface holdings which are administered by the Department of Energy and Natural Resources. Claim staking is not allowed. However, prospecting permits and leases are issued. A prospecting permit covers an area of 50,000 acres and lasts for three years. Its renewal is subject to fulfilling a plan of exploration. The rental is \$125 for each 10,000 acres and a permit bond of \$1,000 for each 10,000 acres must be posted. Lease size is unrestricted. The lease expires after 21 years but is renewable. For years one through five the rental is 26 cents per acre per year and \$1 per acre per year for the balance of the term. There is no work obligation, reclamation requirement, or bond requirement. There is no royalty but there is a 12½% tax on gross income.

## BRITISH COLUMBIA

British Columbia has 224 million acres of land. Claim staking is allowed and limited production is permitted on a claim. There is no time constraint for how long one may hold a claim. Each claim is 51.65 acres. Claims may be combined and converted to a lease as large as 2,066 acres. The lease extends for 21 years and may be renewed. The rental is \$50, plus the costs of publishing notice, surveying, and a \$20 recording fee. There is a work obligation of \$400 per lease per year. A plan of operations and reclamation is required, although no bond need be posted. There is provision in the law for royalties; however, only taxation is being used as a method of acquiring revenue. The tax is 17% on profits. British Columbia has 55,252 quartz claims and 3,007 placer claims, 970 quartz leases and 3,640 placer leases. In 1980 British Columbia received \$94,176 Canadian in rentals and \$651,860 Canadian for cash in lieu of work obligation.

## NORTHWEST TERRITORIES

The Northwest Territories have 162 million acres which are administered by the Department of Indian and Northern Affairs. Claim staking is permitted. Prospecting permits and leases are issued as well. A claim is for 2,500 acres and must be converted to a lease within 10 years. A prospecting permit is for 45,000 acres. If the permit area is north of 68° latitude, the permit is issued for five years because of the short field season. However, if the permit area is south of that latitude the permit expires in three years. There is no permit renewal. The rental fee is 10 cents per acre for the first year, 20 cents per acre for the second, and 40 cents per acre for the third. After the third year there is no rental fee but a \$25 permit fee is charged and there is a work obligation of \$4,500 per year. The lease size is slightly larger: 2,582.5 acres. Its duration extends for 21 years with provision for extension. The rental is \$1 per acre per year for the first 21-year term and \$2 per acre per year thereafter. There is no lease work obligation, plan of operations requirement, or lease bond. Rental fees, however, can be credited to the royalty. The royalty structure is the same as that of the Yukon Territory. The Northwest Territories have 850 leases, 200 prospecting permits and 54,859 claims on its lands. In 1978-79 the Northwest Territories collected \$182,523 Canadian in lease rentals, \$605,641 Canadian in fees, and \$1,467,276 Canadian in royalties.

## YUKON TERRITORY

The Yukon Territory has 131 million acres which are administered by Department of Indian and Northern Affairs. Claim staking is allowed and production is permitted on a claim. The claim size is 51.65 acres. There is no time limit on how long one may hold a claim but a lease option is available. The lease size is the same as that of the claim, 51.65 acres. The lease is for 21 years and may be renewed. The rental fees are 4 cents per acre per year with no lease work obligation, plan of operations requirement, or reclamation requirement. There is no royalty. However, there is a tax on profits above \$10,000. The rate is 3% on profits of \$10,000 to \$1 million, 5% on profits of \$1 million to \$5 million, and 6% on profits of \$5 million to \$10 million. Above \$10 million the tax rate is increased by 1% per million up to 12%.

The Yukon recorded 45,213 quartz claims and 2,181 placer claims in 1980. In 1979-80 \$889,837 Canadian was received for fees, \$21,420 Canadian for rentals, and \$461,769 Canadian for royalties.

A COMPARATIVE CHART OF MINERAL LEASE ACTIVITY

STATE OR PROVINCE	TOTAL # LEASES (last year reported)	TOTAL # PROSPECTING PERMITS OR CLAIMS (last year reported)	TOTAL # PRODUCING LEASES	RENTALS	ROYALTIES BONUSES	TOTAL # OF MILLION ACRES OF FEDERAL ACQUIRED LANDS	FEDERAL ACQUIRED LANDS, MINERALS OTHER THAN OIL AND GAS AS OF 9/78 # OF LEASES	FEDERAL ACQUIRED LANDS, MINERALS OTHER THAN OIL AND GAS AS OF 9/78 # OF ACRES LEASED
ARIZONA	664(20)	502 prospecting permits, very few claims	25	\$191,500	\$9,061,000 in royalties	.4	0	0
CALIFORNIA	3(2)	5(2) prospecting permits	1	\$20,000	\$230,000 in royalties	3.4	4	819
COLORADO	286,312 acres # leases not available		40	\$236,040	\$213,831 in royalties, \$242,525 in bonuses	2.2	34	36,889
IDAHO	230(50)	723 claims	5	\$60,000	\$2,500 in royalties	.8	3	560
MONTANA (moratorium since 4/80)	44(16)		1	\$17,550	\$1,005 in royalties	2.4	5	8,698
NEBRASKA	0		0	0	0	.5	0	0
NEVADA	0		0	0	0	.2	0	0
NEW MEXICO (moratorium- no sales since 4/80)	2,000		2	\$749,000	\$141,000 in royalties, \$453,147 in bonuses	1.7	2	608
NORTH DAKOTA	0	0	0	0	0	2.2	17	25,595
OKLAHOMA	0	0	0	0	0	1.4	0	0

OREGON	0	18(11) prospecting permits	0	\$23,392	0	1.4	0	0
SOUTH DAKOTA	0	70,000 acres prospecting permits	0	\$35,000	0	1.9	0	0
TEXAS	0	50 prospecting permits	0	\$16,000	0	3.5	0	0
UTAH	342,889 acres		15,854 acres	\$239,000 in bonuses and rentals	\$344,171	.6	0	0
WASHINGTON	200	300	3	\$97,000	\$3,000	1.8	0	0
WYOMING	2,354 uranium 17 gold, silver, copper 3 iron, 8 jade		0	not available	0	.7	6	3,120
ALBERTA	27(15) quartz leases	34(21) quartz prospecting permits	0	no available	0			
BRITISH COLUMBIA	9 quartz leases, 3,640 placer leases	55,252 quartz claims, 3,007 placer claims	not available	\$94,176 rentals, \$651,860 cash in lieu	not available			
NORTHWEST TERRITORIES	850	54,859 claims, 200 prospecting permits	8	\$182,523 in rentals, \$605,641 in fees	\$1,647,276			
YUKON TERRITORY	0	45,213 quartz, 2,181 placer claims	not available	\$21,420 in rentals, \$889,837 in fees	\$461,769 in royalties under the Quartz Mining Act			

ATTACHMENT D  
"Annual Placer Mining Application Land Use and  
Water Use Permits and Mining Leases"  
"Factsheet: Annual Placer Mining Application  
Permitting Process" and  
Affidavit of Annual Labor"

Affidavit of Annual Labor

United States of America } ss.  
STATE of Alaska

.....being first duly sworn on his oath  
Print name of person who did the work  
deposes and says:

1. I am well acquainted with.....claim(s) known as.....  
Placer or lode Name of claim  
on....., a tributary to..... In the.....  
Name of stream, mountain, etc.  
Mining District and.....Recording Precinct, Alaska, and I know that  
.....  
Print name of claim owner is the owner of said claim(s). The claim(s) lies  
.....  
Describe location of claim with reference to a well known or easily found landmark or land survey

2. That I performed.....days of work and labor.....said claim doing  
Open or for  
.....  
Describe actual work accomplished, amounts dealt, and time spent on each item.  
.....  
.....; such work and labor is reasonably worth  
the sum of \$.....; and the work was done at.....  
Actual location of work or with reference to claim

3. Said work and labor was performed by me between the.....day of  
....., 19....., and.....day of.....  
19....., or upon the following days.....

4. Said work and labor was performed by me at the instance and request of said  
....., owner of said claim, who did actually pay me  
the sum of \$..... for said work and labor.

5. Said work and labor was done for and as assessment work for the benefit of said  
claim for the assessment year ending at noon on the first day of....., 19.....

.....  
Signature of person who did the work

Subscribed and sworn to before me this.....day of....., 19.....

(Notarial Seal)

.....  
Notary Public in and for Alaska.  
My commission expires.....

Note: The affidavit may be sworn to before the local postmaster.

20-53  
sed 9/83)  
10-84

AFFIDAVIT OF ANNUAL LABOR  
FOR STATE MINING CLAIMS OR FOR MINERAL LEASES  
OR RENTAL FOR LEASEHOLD LOCATIONS  
Please type or print

Please read  
instructions on reverse  
before completing  
this form.

id States of America }  
                          } ss:  
s of Alaska          }

This affidavit of annual labor is for the assessment year (for claims) or rental year (for leasehold locations) which ended at noon on September 1, 19\_\_.

NAME(S) OF CLAIMS OR LEASEHOLD LOCATIONS	ADL NUMBERS

(Attach additional sheet if more space is needed.)

These claims or leasehold locations are located in the following Meridian(s), Township(s), Range(s) and Section(s):

NAME(S) OF CURRENT OWNER(S)	CURRENT MAILING ADDRESS(ES)

Excess work in the amount of \$ \_\_\_\_\_ is to be applied from previous years.

If only excess work is being claimed this year, do not fill in lines 6 through 11.

Work was performed on the following dates: \_\_\_\_\_

The number of person-days worked was: \_\_\_\_\_

The work performed and improvements made are described as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The value of the above-described work excluding the value of claim maintenance is: \$ \_\_\_\_\_

NAME(S) OF THE PERSON(S) WHO DID THE WORK	CURRENT MAILING ADDRESS(ES)

If the labor was done by other than the owner or the owner's lessee, the amount paid for the work and improvements made was \$ \_\_\_\_\_, and \_\_\_\_\_ (Type) made the payment.

I, \_\_\_\_\_, swear under penalty of perjury that the foregoing is true.  
(PRINT NAME HERE.)

X \_\_\_\_\_  
(Sign name here.)

Recorder's Office Use On

Subscribed and sworn to before me this \_\_\_\_\_  
(Date)

Signature of Notary: \_\_\_\_\_

My commission expires: \_\_\_\_\_

This affidavit may be used to meet the State of Alaska's statutory and regulatory requirements for recording annual labor on state mining claims or work instead of rental on state leasehold locations. Leasehold locators are required to pay an annual rental, but may use labor as credit against the rental. The annual labor for claims and the annual rental for leasehold locations is a minimum of \$200.00 per claim or leasehold location each assessment year. If you have questions about your mining claim or leasehold location, contact the Division of Minerals and Energy Management (DMEM) at 276-2653 in Anchorage, 79-2243 in Fairbanks, or Pouch 7-034, Anchorage, AK 99510.

Throughout the instructions, we will use "claim" to refer to both mining claims and leasehold locations.

This affidavit may be filled out by the owner of a claim or by some other person having knowledge of the facts.

This affidavit must be recorded in the recording district where your claim is located within 90 days after the end of the assessment year. Usually the last day to record is November 30. Failure to timely and properly record results in the abandonment of your claim.

The first assessment or rental year begins at noon on the September 1 after the date the notice of location was posted and ends at noon on the September 1 of the following year. For example, if you located your claim on August 30, 1980, your first assessment year began September 1, 1980 and ended September 1, 1981. If you located your claim September 2, 1980, your first assessment year began September 1, 1981 and ended September 1, 1982.

Alaska statutes allow miners on state claims to carry over the value of excess work up to a maximum of \$800 per claim. You must, however, file an affidavit of annual labor each year. You may combine excess work from previous years with work from this assessment year.

Claim maintenance (brushing lines and reposting) is considered a duty that Alaska Statute 38.05.265 imposes on the claimant in addition to the annual labor requirement. Therefore, maintenance work is not acceptable as annual labor. If your affidavit lists work required to maintain the claim in good standing, be sure to indicate that it is not included in the declared value of your annual labor.

You may use one affidavit of annual labor for a group of claims.

For information about mineral locations under federal mining law, please contact the Bureau of Land Management.

#### INSTRUCTIONS

The numbers listed below match the numbers on the affidavit.

1. Fill in the year for which you are claiming annual labor.

List all claims by name and ADL number. You need not list each individual claim; group claims whenever possible (for example, Gold Rush 1-10, ADL 390000 - 390009).

2. List the meridian(s), township(s), range(s) and section(s) in which the claims are located.

List the names and mailing addresses of all current owners. DMEM will usually send notices and decisions about your claim to the first name and address listed. Under Alaska regulations, it is your responsibility to be sure that DMEM has your current address.

3. Fill in the amount of excess work to be applied from previous years, if any. If you are combining excess work from previous years with work from this assessment year, complete the rest of this form. If you are using only excess work from previous year(s), go on to #12.

4. List each day that work was done. For example, only list August 6 through 28 if work was done each day during that time period.

List the total number of days worked by all persons. (Number of days x number of workers = total number of person-days worked).

Describe the work performed in as much detail as necessary to support the value you declare in #9; for example, "sunk shaft 10 feet," "stripped 150 cubic yards of overburden with a D-6 cat in preparation for mining," "core drilling 150 feet," "sluiced 5000 cubic yards of gravel."

5. Declare the full value of work you have done. Remember that excess work may be carried over to future assessment years (see F). Do not include brushing lines or reposting as part of the declared value of your annual labor.

6. List the name(s) and address(es) of the person(s) who did the work.

7. Fill in the actual amount paid for the work and improvements and, if paid by other than the owner's lessee, give the name of the person who made the payment.

8. The person signing the affidavit must print and sign his/her name before a notary or other authorized person. Generally, the following persons are authorized to take an oath, affirmation, or acknowledgement in this state: a justice, judge, magistrate, clerk, or deputy clerk of the court of the State of Alaska or of the United States, a notary public, and a U.S. postmaster. For a more complete list, see Alaska Statute 09.63.010. If an authorized person is not available, you may amend the statement in to read as follows: "I, (print your name), swear under penalty of perjury at (location) on (date) that no official empowered to administer oaths is available and that the foregoing statements are true. You must sign this statement. It is advisable but not required that a witness sign also. The witness's address should also be included."



Factsheet:

# ANNUAL PLACER MINING APPLICATION PERMITTING PROCESS

In order to operate a placer mine in the State of Alaska, permits and licenses are required by as many as twelve State and Federal agencies. To assist the industry with applications in the complex permitting process, the State designed the Annual Placer Mining Application (APMA) popularly known as the Tri-agency form.

Each year a miner intends to operate, an APMA should be filled out and submitted to the Division of Mining no later than mid-February. A \$100 filing fee is required by the Department of Natural Resources (DNR). Division of Mining reviews the form for completeness and, when accepted, makes distribution of twelve copies of the application to the appropriate State and federal agencies. This process relieves the placer miner of having to understand the details of the permitting process, as DOM does much of the red tape paper work. Permits may or may not be required and issued by the various agencies, but they are all given the opportunity to make that decision. These agencies review the APMA and either 1) issue the required permit with applicable stipulation(s); 2) request more information from the operator before a permit is issued; or 3) deny the permit under their statutory and regulatory authority.

A listing of these agencies and the respective permits/license that they manage is as follows:

AGENCY	PERMIT
Department of Fish and Game-----	Fish Habitat and Special Areas Permit
Department of Environmental Conservation--	Wastewater Discharge Permit
Department of Revenue-----	Mining License (to track your State tax obligation)
DNR, Division of Mining----	Miscellaneous Land Use Permit (surface use permit)
DNR, Division of Land and Water Management--	Water Permit
DNR, Division of Land and Water Management---	Miscellaneous Land Use Permit (for access across state land)
Office of Management and Budget-----	Coastal Zone Consistency Determination
DNR, Division of Parks-----	Special Park Use Permit
U. S. Forest Service-----	Approved Plan of Operation
DNR, Division of Forestry-----	Timber purchase may be required
U. S. Parks Service-----	Approved Plan of Operation
Bureau of Land Management-----	Approved Plan of Operation