ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5979 HOUSE RESOURCES

383

IMPORTANT NOTE!!! The Environmental Protection Agency's National Pollutant Discharge Elimination System Permit (NPDES) is not issued under the APMA process. A separate application (EPA Short Form C) must be submitted directly to the Environmental Protection Agency.

COMMONLY ASKED QUESTIONS

1. If I already have some of my permits, do I need to fill out a new Annual Placer Mining Application each year?

   Yes. Many of the permits are only issued for one year. The distribution process performed by the Division of Mining will insure that you have all the required permits issued under the current statutes and regulations.

2. I have my mining license. Isn't this really the only permit I need?

   No. A mining license is the Alaska Department of Revenue's way of tracking your income tax obligation to the State (you have no tax obligation for the first three and one-half years of production) It is not a mining permit and has nothing to do with authorizing surface disturbance or waste water discharge from a mining operation. You must obtain surface use, water use, habitat, and NPDES permits before you begin work.

3. If I pay $100.00 for the Annual Placer Mining Application, do I have to pay for other permits?

   No. The $100.00 fee covers the application costs of all DNR permits obtained through the APMA.

4. Will the APMA form get me every permit I need?

   No. The NPDES permit for water discharge must be applied for directly from the Environmental Protection Agency.

STATE OF ALASKA

ANNUAL PLACER MINING APPLICATION
LAND USE AND WATER USE PERMITS AND MINING LICENSE

GENERAL INFORMATION

1. For most exploration and mining operations, the completion of this form should satisfy the application requirements for the following permits:
   - Wastewater Discharge Permit - Issued by the Department of Environmental Conservation
   - Habitat Protection Permit - Issued by the Department of Fish & Game
   - Miscellaneous Land Use Permit - Issued by the Department of Natural Resources
   - Water Use Permit - Issued by the Department of Natural Resources
   - Alaska Mining License - Issued by the Department of Revenue

   This form also will be accepted by Federal Agencies for the following requirements:
   - Annual Notice or Plan of operation - For the U.S. Bureau of Land Management
   - Annual Plan of Operation - For the U.S. Environmental Protection Agency
   - Notice of Intent and Plan of Operation - For the U.S. Forest Service

   If more detailed information is required, you will be contacted by the appropriate agency.

2. Applications should be submitted early to assure the issuance of permits before annual operations in the field begin. Only permitted operators should be working in the field.

3. The permits which are issued will authorize the work described in this application. Changes in your operation will require another application to describe the operation and may result in amended permits.

4. This application does not serve as the application for other permits which may be needed for your operation.

5. If you do not intend to perform exploration or mining work at the claim or transport equipment to the claim do not file this application.

6. If mining operations or access to the claims cross state park lands, please contact the Department of Natural Resources, Division of Parks, 225 Cordova, Building A, Anchorage, Alaska 99501; Telephone (907) 276-2653.

INSTRUCTIONS

1. Please type or print responses in black ink. Answers to all of the questions are necessary to expedite processing of your permits. If a question does not apply to your operation, indicate with N/A.

2. If space provided on the form is not enough for your written response, please use an additional sheet of paper. Identify this sheet as part of the application by putting your name and the 5 digit application number on the top of the sheet. (Additional space may be needed for listing claim names, ADL or BLM serial numbers.)

3. With this application form, attach a copy of the appropriate USGS 1:63360 Map. Please identify this map as part of the application by putting your name and the 5 digit application number on the top of the map.

4. On the USGS Map please provide the following information:

   (a) The Claim name and the ADL or BLM serial number for all claims in this claim group. Each claim will be specifically named on the water permit or certificate so it is important that the list is complete.
   (b) The location of all claims
   (c) The identification of those claims which will be worked this year
   (d) The location of your camp
   (e) The location of the access routes to your claims (include airstrips)

5. Submit this application, as well as attachments, to the office of the Department of Natural Resources, Division of Mining, which is nearest to the claim.

ANCHORAGE	FAIRBANKS	JUNEAU
Frontier Building	794 University Ave.	State Office Building
3601 "C" Street	(Basement)	400 Willoughby
10th Floor, Suite 1088	College, AK [illegible]	Juneau, AK 99811
Pouch 7-005	(907) 474-7062	(907) 465-3400
Anchorage, AK 99510		
(907) 276-2653, Ext. 2205		

STATE OF ALASKA

ANNUAL PLACER MINING APPLICATION
LAND USE AND WATER USE PERMITS AND MINING LICENSE

No. ~~850590~~

APPLICANT AND SITE INFORMATION

DO NOT MARK IN THIS SPACE

Do you plan to do the following work on the claim(s)?
☐ Explore ☐ Mine ☐ Transport Equipment

Is claim patented?
☐ Yes ☐ No

Are the mining claims:
☐ Federal ☐ State

Check box(es) and list number(s) if you have had any of the following permits for these claims:

- ☐ DNR Land Use Permit No.:
- ☐ Fish & Game - Habitat Protection Permit No.:
- ☐ DNR - Water Use Permit ADL No.:
- ☐ DEC - Wastewater Discharge Permit No.:
- ☐ Revenue - Alaska Mining License No.:
- ☐ EPA-NPDES Wastewater Discharge Permit No.:

Check the mining district in which the claims are located:

- ☐ Circle
- ☐ Fairbanks
- ☐ Forty Mile
- ☐ Hot Springs
- ☐ Iditarod
- ☐ Innoko
- ☐ Koyukuk
- ☐ Kuskokwim
- ☐ Seward
- ☐ Seward Peninsula
- ☐ Other (Specify):

Check the box to indicate who controls the land on which the claim(s) are located and which is crossed for access:

- ☐ U.S. National Park Service
- ☐ U.S. Military
- ☐ U.S. Forest Service
- ☐ U.S. Bureau of Land Management
- ☐ U.S. Fish & Wildlife Service
- ☐ State of Alaska
- ☐ City (Specify):
- ☐ Borough (Specify):
- ☐ Native Corporation (Specify):
- ☐ Other (Specify):

Claim Owner's Full Legal Name		Street Address or P.O. Box		
City	State	Zip Code	Home Telephone	Office Telephone
Name of Lease Holder (if rights to claim are leased)		Street Address or P.O. Box		
City	State	Zip Code	Home Telephone	Office Telephone
Name of Operating Company or Authorized Representative in Field		Street Address or P.O. Box (Specify if Summer Address is different from Winter)		
City	State	Zip Code	Home Telephone	Office Telephone
Employer I.D./Social Security Number	Month Start Up This Year	Month Shut Down This Year	Number of People Working Claim	
On what creek(s) are your claim(s) located?		Claim(s) Location: Section(s), Township(s), Range(s), Meridian:		

DESCRIPTION OF OPERATION

List type, size, purpose and number of pieces of equipment to be used on the claim.

Which equipment listed above is used for the removal of overburden?

Which equipment listed above will be used in the stream?

Beginning and ending dates for transportation of equipment across country TO a claim:	If using a hydraulic giant, list nozzle size, number of nozzles, feet of head and total amount of water CFS or GPD:
Beginning and ending dates for transportation of equipment across country FROM a claim:	
List type and amount of explosives to be used:	If explosives will be used in or near streams or other bodies of water, indicate when, where and why they will be used;

Type of overburden: (O.K. to check more than one)
☐ Rock ☐ Sand ☐ Silt ☐ Clay ☐ Organic Material
☐ Other (Specify):

Depth of Overburden

Amount of Overburden to be removed:
Number of acres:
Average depth in feet:

No. 850590

PLACER MINING METHOD

Check method of mining and processing: (O.K. to check more than one.)

☐ Suction Dredge Intake Size _____(in.) Pump Capacity _____(GPM)

☐ Sluice Pump Intake Size _____(In.) Pump Capacity _____ (GPM)

☐ Bucket Line Dredge Size of Buckets _____ (cu. ft.)

☐ Washing Plant Type _____ Vol. Material Processed/hr. _____(cu. yd.)

☐ Sluice Box Length ____(ft.) Width ____(in.)

Depth of Water in Box ____ (In.) Slope _____ (In./ft.)

☐ Chemical Treatment ☐ Mercury ☐ Cyanide ☐ Other

Describe process on a separate sheet.

Daily Volume of Material Processed: _____(cu. yds.)

WATER SUPPLY

Type of Dam (Exclude settling ponds):

☐ Earthfill ☐ Timbercrib ☐ Concrete ☐ Other: _____

☐ Temporary ☐ On-stream

☐ Permanent ☐ Off-stream

Size of Dam (in feet)

Length Width at Crest Width at Base Height

Storage Capacity: (Indicate Length and Width of Area and Depth of Water)

Spillway Dimensions (in feet)

Depth Width at Base Side Slope

FUEL

Fuel Stored: (List type of fuel)

Amount of fuel stored:	Distance from stored fuel to nearest body of water:
Method of transporting fuel:	Amount of fuel transported per trip:

RECLAMATION

Indicate method of reclaiming area of operation.
(O.K. to check more than one)

☐ Level tailings piles ☐ Reestablish stream channels

☐ Regrade contours ☐ Remove toxic materials

☐ Respread topsoil ☐ Other: (Specify)

☐ Revegetate or reseed

WATER USAGE

What % of a natural stream is diverted for any reason: %	What % of diverted water is used for mining: %	Of water used for mining what % is recycled: %

Amt. of water required: Qty: ☐ GPM ☐ GPD ☐ CFS	Usage: Hours/Day	Usage: Days/Week

Date commenced operations: Month Year	Years needed to mine out claim:

If water is not used for mining, is it routed around the treatment pond? ☐ YES ☐ NO	When wastewater is returned to a stream, is it treated? ☐ YES ☐ NO

Condition of stream above claim, prior to discharge of wastewater:

☐ Clear ☐ Murky ☐ Muddy

If "muddy", is it: ☐ Natural ☐ Manmade

☐ Other: (Describe)

Method of taking water:

☐ Diversion Ditch ☐ Headgate ☐ Capacity _____ (GPM)

WASTE WATER TREATMENT

Capacity of Settling Pond(s): Indicate length and width of area and depth of water for each pond.

1. 2.

3. 4.

ACCESS

If access roads or airstrips will be built to the claim, indicate:

Length _____ (ft.) Depth of Material _____ (ft.)

Width _____ (ft.) Kind of Material Used _____

DRILLING

Estimated maximum depth: (ft.)	Number of holes drilled:
Diameter of holes drilled: (in.)	Type of drill used:

CLAIM LISTING

Please list all claim names within this claim group. If claim numbers are not known, attach copies of location notices. Each claim will be specifically named on your water permit or certificate. You may use the number of each claim on your sketch and USGS map for convenience.

No.	CLAIM NAME	ADL/BLM No. If known	No.	CLAIM NAME	ADL/BLM No. If known
1.			9.		
2.			10.		
3.			11.		
4.			12.		
5.			13.		
6.			14.		
7.			15.		
8.			16.		

Signature of Applicant	Relationship to Claim(s): ☐ Owner ☐ Lessee ☐ Operator	Date

No. ~~850590~~

SKETCH SHEET In the area below sketch the area of operation; locate and label the following information.

1. Camp site including all buildings and structures used for housing, operations, and storage.
2. Access routes within area of claim(s).
3. Natural waterways within claim(s).
4. Name of creek.
5. Water source.
6. Any stream diversion.
7. Point of withdrawal of water.
8. Water ditches, pipelines, pumpsites, and discharge points.
9. Settling ponds and water supply reservoirs.
10. Where water is used.
11. Sluice.
12. Area to be mined this year.
13. Overburden disposal site.
14. Tailing disposal site.
15. Other disposal sites. (Solid waste or hazardous materials or sanitary waste.)
16. Fuel storage site.
17. Airstrips

Name of USGS Map(s) Used:

SCALE: 1" = ¼ Mile

FACTS TO KNOW ABOUT COMPLETING THE ANNUAL PLACER MINING APPLICATION

WHO SHOULD APPLY - Anyone planning any type of mining activity (exploring, mining, transporting equipment or developing access) should submit this application. Using black ink and 8 1/2" X 11" paper will simplify distribution, and therefore speed up the process.

APPLICATION FEE - Submit a separate application for each operation site. A user fee of $100 is required (effective January 1, 1986 per 11 AAC 05.010) for each application. Make checks payable to the Department of Revenue.

COMPLETE ALL BLANKS - If a particular blank does not apply to your operation, please indicate "N/A".

SKETCH SHEET - This sketch should show the details of your mine site. Ensure that the sketch sheet addresses all seventeen items listed at the top of the page, even if the response is "N/A" (see example on the reverse side of this sheet). Do not color code mine features; color will not copy and makes duplicates unuseable.

This sketch should be of <u>your actual operating site</u> and to a scale that will fit on the page. If you don't know the scale, indicate approximate distances between the various mine features on the map. For example: write down the dimensions of the area to be mined, the size of your ponds, length of pipe lines, the distance between your treatment system and the receiving waters, etc.

TOPOGRAPHIC MAP - Attach a U.S.G.S. 1:63,360 topographic map (1"=1 mile) showing the location of your claims, <u>which of the claims will be worked</u> (indicate by claim name(s) and serial number(s)), the location of your camp and access route(s) to your claims (including airstrips). A photocopy of the topo map is acceptable but make sure your access from a main road is clearly shown.

LOCATION - Ensure that a complete legal location description is provided (township, range, meridian and section).

CLAIM NAMES - Be sure to include all claim names and assigned "ADL" or "F" serial numbers.

LODE MINES - This application currently is used for both lode <u>and</u> placer operations. The lode miner may attach any additional information that may be helpful to further explain the plan of operation.

12/11/85

EXAMPLE

No.

SKETCH SHEET In the area below sketch the area of operation; locate and label the following information.

1. Camp site including all buildings and structures used for housing, operations, and storage.
2. Access routes within area of claim(s).
3. Natural waterways within claim(s).
4. Name of creek.
5. Water source.
6. Any stream diversion.
7. Point of withdrawal of water.
8. Water ditches, pipelines, pumpsites, and discharge points.
9. Settling ponds and water supply reservoirs.
10. Where water is used.
11. Sluice.
12. Area to be mined this year.
13. Overburden disposal site.
14. Tailing disposal site.
15. Other disposal sites. (Solid waste or hazardous materials or sanitary waste.)
16. Fuel storage site.
17. Airstrips

Name of USGS Map(s) Used:

For Example

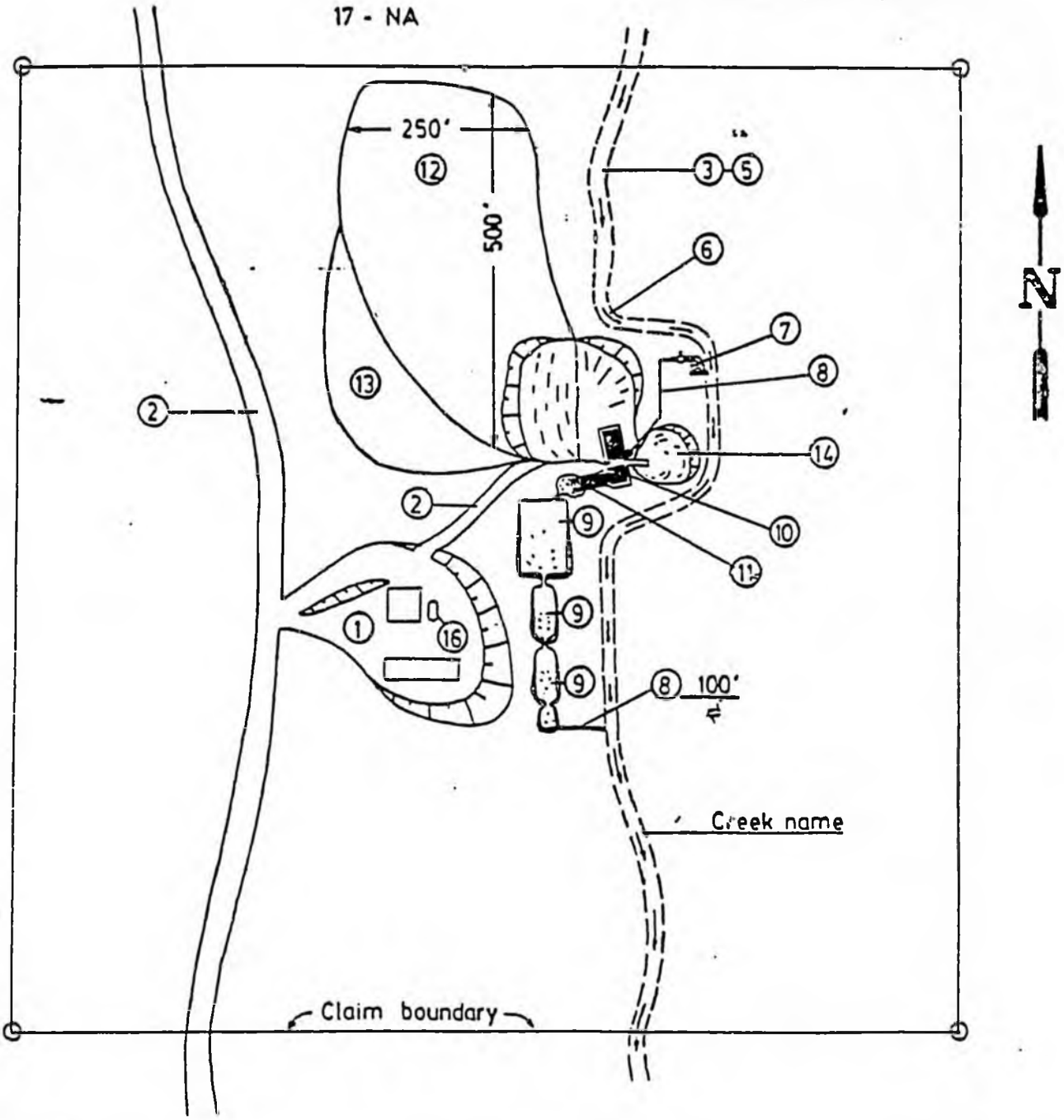
Circle C-3

SCALE: 1" = 220 ft.

Prepare map at scale suited to the size of your operation

15 - NA

17 - NA



Claim name:.....

TO BE COMPLETED BY DNR

COASTAL ZONE CONSISTENCY CERTIFICATION
PROJECT INFORMATION SHEET - ANNUAL PLACER MINING APPLICATION

Applicant: _____

Project Title: Placer Mining APMA Number _____

State ID Number: _____*

Project Location: _____

Coastal District: _____ Approved Plan: Yes/No

State or Federal Approvals: Any number of state and federal approvals may be necessary depending upon the project. It is the responsibility of the reviewer to notify the OMB office circled below which permits will be required.

REVIEWER MILESTONES:

Day 1: _____*
Review Schedule: 30 Days (State Claim) or 50 Days (Federal Claim)
Request for additional information by: _____*
Comments due by: _____*
Project status notification by: _____*

Project Coordinator: _____

Please direct all responses and questions to the circled Office of Management and Budget, Division of Governmental Coordination office:

Southeast Office	Southcentral Office	Northern Office
Div. of Govt. Coordination	3600 Denali St.,#700	675 Seventh Ave.,
Pouch AW	Anchorage, AK 99503	Station H
Juneau, AK 99811	(907) 272-3504	Fairbanks, AK 99701
(907) 465-3562		(907) 456-3084

* This information will be supplied by the OMB regional office via telephone on the day the APMA is ready for distribution.

0878v

Dear Miner,

If your proposed project is located in the coastal zone, it will be necessary for you to sign the certification statement below, answer the questions about federal permits, and then enclose this sheet with your completed Annual Placer Mining Application. This statement will be forwarded to the Office of Management and Budget, Division of Governmental Coordination to be kept in your project file. Should a federal permit require this certification, a copy will be sent to the appropriate federal agency. Section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 as amended by 16 USC 1456(c)(3) requires that applicants for federal permits to conduct activities affecting land or water uses in Alaska's coastal area must provide certification that the activities will comply with the standards of the Alaska Coastal Management Program.

So that you may determine if your proposed project is in the coastal zone, a set of maps showing the coastal zone boundries are available for your inspection in each Division of Mining Information Office. Prior to signing this statement you should review the Alaska Coastal Management Program, pertinent statutes and regulations, and approved coastal management plans to assure your project is consistent with these programs. Each Division of Mining Information Office has this information available for your review.

Certification Statement

I certify that, to the best of my knowledge and belief, the proposed activity described in my annual placer mining permit application complies with the approved Alaska Coastal Management Program, and will be conducted in a manner consistent with such program.

_____ _____

Signature of Applicant Date

Have you applied for any federal permits? (Please note each federal agency and date. Thank you.)

EPA? _____

BLM? _____

Corps of Engineers? _____

Other? _____ Which agency? _____

0S79v

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING

USER FEES

FOR ANNUAL PLACER MINING APPLICATION

IN EFFECT JANUARY 1, 1986

As of January 1, 1986, DNR will require user fees for some permits for land and water use. A $100.00 fee will be required for the Annual Placer Mining Application which will cover the costs of all DNR permits issued under this application. If permits are applied for individually, fees are $50.00 each.

Alaska Department of
NATURAL
RESOURCES

ATTACHMENT E
"Department of Natural Resources Proposed Options
for Responding to Alaska Supreme Court 6
(i) Decision"

Summary of Alaska Supreme Court 6(i) Decision

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

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

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

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

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

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

Disadvantages: Major change in Alaska's mining law.

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

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

Summary of Alaska Supreme Court 6(i) Decision

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

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

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

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

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

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

Approximately equal amounts of state lands managed under each system, but most state mining claims would fall within the leasing system.

Moderate geologic analysis required prior to implementation.

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

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

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

Very few mineral deposits will meet this test; therefore, very little state land managed under this program.

Detailed geologic analysis required prior to implementation.

Advantages: Impacts only a few mineral development projects.

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

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

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

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

Disadvantages: Major change in Alaska's mining law.

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

ATTACHMENT F
Alaska Administrative Code Regulations on
Reclamation of State Mineral Lands, AAC 96.010 - .250"

(29) "surface waters" means ponds and lakes greater than 10 acres in size, and streams, creeks, and rivers which are valuable for domestic use, spawning, rearing, or migration of fish, or have value to protect water quality;

(30) "upstream debris" means slash or debris located 50 feet or less upstream from a culvert or bridge that may reasonably be expected to plug the inlet or damage the structure; and

(31) "waiver" means a deviation from standards set out in 11 AAC 95.100 — 11 AAC 95.180 which is approved by the state forester with the concurrence of the Department of Fish and Game and the Department of Environmental Conservation. (Eff. 2/15/81, Reg. 77; am 11/21/82, Reg. 84)

Authority: AS 41.15.050 AS 41.17.020
AS 41.15.060 AS 41.17.080
AS 41.15.090

CHAPTER 96. MISCELLANEOUS LAND USE

Article

1. Provisions for General Land Use Activity (11 AAC 96.010—11 AAC 96.150)
2. Additional Provisions for Seismic Exploration and Stratigraphic Tests (11 AAC 96.210—11 AAC 96.240)
3. General Provisions (11 AAC 96.250)

ARTICLE 1. PROVISIONS FOR GENERAL LAND USE ACTIVITY

Section

10. Operations requiring permits
20. Equipment use not requiring a permit
30. Application
40. Term and conditions
50. Effective date
60. Bonds
70. Completion of operations
80. Confidential status of information
90. Inspection of operation
100. Penalty
110. Appeals
120. Purpose
130. Applicability
140. General stipulations
150. (Repealed)

11 AAC 96.010. OPERATIONS REQUIRING PERMITS. (a) A permit is required for the following activities on state lands:

(1) activity requiring

(A) the use of explosives and explosive devices, except firearms;

(B) the use of any equipment not included in the list specified in 11 AAC 96.020;

(C) the use of hydraulic prospecting or mining equipment methods;

(D) drilling to a depth in excess of 300 feet, including exploratory drilling or stratigraphic test wells on state land not under oil or gas lease;

(E) geophysical exploration for minerals subject to lease under AS 38.05.135 — AS 38.05.181;

(2) activity that the director determines may result in unnecessary harm to land having special scenic, historic, archaeologic, scientific, biological, recreational, or other special resource values; and

(3) activity on land under mineral permit, lease, or claim by a person other than the holder of the permit, lease or claim, or his authorized representative, if the parties cannot agree on what constitutes unnecessary or unreasonable interference as provided in 11 AAC 96.140(11).

(b) The activities for which a permit is required under (a)(2) of this section will be listed, and the land designated as special use lands on the official records of the division, the records will be available in all state land offices. Activities requiring a permit on land designated as special use land is not a violation of this chapter unless the user has received written notice of the designation or the designation has been effective for 90 days. (Eff. 1/1/70, Reg. 32; am 3/2/81, Reg. 77; am 5/8/83, Reg. 86)

Authority: AS 38.05.020 AS 38.05.180
AS 38.05.035 AS 41.20.020

11 AAC 96.020. EQUIPMENT USE NOT REQUIRING A PERMIT. (a) A current list of equipment types the use of which does not require a permit under 11 AAC 96.010(a)(1)(B) will be maintained and available in all state land offices. A permit is required for the use of all equipment types not appearing on this list unless otherwise authorized by the director.

(b) This list will include but is not limited to the following:

(1) light portable field equipment; such as, hand-operated picks, shovels, pans, earth augers and backpack power drills and augers;

(2) vehicles such as snow machines, jeeps, pickups and weasels. Augers and drills may be mounted on such equipment;

(3) airborne equipment;

(4) marine equipment, except equipment which will disturb the submerged land.

(c) This section does not apply to areas designated under 11 AAC 96.010(a)(2). (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.030. APPLICATION. (a) The application for permit must contain the following information in sufficient detail to allow evaluation of the planned activities' effect on the land:

(1) a map showing the general location of all activities and routes of travel of all equipment for which a permit is required;

(2) a description of the proposed activity and the type of equipment that will be used.

(b) The permit application shall be acted on promptly. If the permit is not issued within 30 days of receipt of a proper application, the applicant may proceed with his operations subject to the provisions of 11 AAC 96.140 and the provisions of the permit when issued. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.040. TERM AND CONDITIONS. Permits will be granted for any term requested not to exceed one year. The permit may be extended for any number of consecutive periods, each period not to exceed one year. Proposed modifications in the original plan shall be indicated in writing. The director may modify existing stipulations or require additional stipulations in the approval of an extension or modification. Each permit issued is subject to the provisions of 11 AAC 96.140 and any other provisions the director determines necessary to assure compliance with these regulations. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.050. EFFECTIVE DATE. The effective date of the permit shall be the first day of the month following the date on which the permit was signed on behalf of Alaska; provided,

however, upon request by the applicant, the permit may be dated the first day of the month in which the permit was signed on behalf of Alaska. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.060. BONDS. The permittee may be required to furnish a personal or corporate surety bond, acceptable to the director and conditioned upon compliance with all the terms of the permit. The director shall determine the amount of the bond, if required, based on the scope of the activity planned. The director shall maintain a schedule showing the amount of bond required by type of operation so that the permittee may submit the bond with the application. Operations requiring a bond shall not commence until an acceptable bond has been filed. The director shall give notice of any such bond required within 30 days of receipt of a proper application. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.070. COMPLETION OF OPERATIONS. Upon completion of the operations under a permit and its extensions, the permittee shall file a map showing the location of all permit activities which were not shown in the permit plan, or any modifications of the permit plan, and include a detailed statement of cleanup and restoration work at the site. Within 90 days of filing an acceptable completion statement, the permittee will be notified of any cleanup and restoration work required. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.080. CONFIDENTIAL STATUS OF INFORMATION. All information required to be filed under these regulations shall be held confidential as provided by AS 38.05.035(a)(9). (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.090. INSPECTION OF OPERATION. All operations under 11 AAC 96.010 — 11 AAC 96.150 are subject to inspection by the director. The permittee is not obligated to provide transportation or lodging for inspection personnel. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.100. PENALTY. Any activities on state lands done in violation of 11 AAC 96.010 — 11 AAC 96.150 shall be considered waste, trespass, or injury to state lands under AS 38.05.360. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.110. APPEALS. A person aggrieved by an order, decision or other action of the director, may appeal to the commissioner of the Department of Natural Resources. The notice of appeal must be received at the principal office of the division of lands within 20 days after receipt of notice of the director's decision. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.120. PURPOSE. The purpose of 11 AAC 96.010 — 11 AAC 96.150 is to provide controls over activities on State of Alaska lands in order to minimize adverse effects on the land and its resources. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035
AS 41.20.020

11 AAC 96.130. APPLICABILITY. 11 AAC 96.010 — 11 AAC 96.150 apply to all land use activities on Alaska state lands except activities authorized under any State Division of Lands administered permit, lease, or contract, by the permit, lease, or contract holder, or his authorized agent and except lands which have, by administrative action or act of the legislature, been reserved from multiple-use management. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035

11 AAC 96.140. GENERAL STIPULATIONS. All land use activities are subject to the following provisions:

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

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

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

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

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

(6) Trails and campsites shall be kept clean. All garbage and foreign debris shall be eliminated by removal, burning, or burial, unless otherwise authorized.

(7) All survey monuments, witness corners, reference monuments, mining claim posts, and bearing trees shall be protected against destruction, obliteration, or damage. Any damaged or obliterated markers shall be reestablished in accordance with accepted survey practice of the division.

(8) Every reasonable effort shall be made to prevent, control, or supress any fire in the operating area. Uncontrolled fires shall be immediately reported.

(9) Holes, pits, and excavations shall be filled, plugged, or repaired to the satisfaction of the director. Holes, pits, and excavations necessary to verify discovery on prospecting sites, mining claims, and mining leasehold locations may be left open but shall be maintained as required by the director.

(10) No person may engage in mineral exploratory activity on land, the surface of which has been granted or leased by the State of Alaska, or on land for which the state has received the reserved interest of the United States until good-faith attempts have been made to agree with the surface owner or lessee on settlement for damages which may be caused by such activity. If agreement cannot be reached, or lease or surface owner cannot be found within a reasonable time, operations may be commenced on the land only with specific approval of the director, and after making adequate provision for full payment of any damages which the owner may suffer.

(11) Entry on all lands under mineral permit, lease, or claim, by other than the holder of the permit, lease, or claim, or his authorized representative, shall be made in a manner which will prevent unneccessary or unreasonable interference with the rights of the permittee, lessee, or claimant. (Eff. 1/1/70, Reg. 32)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.130

11 AAC 96.150. DEFINITIONS. Repealed 3/21/81.

ARTICLE 2.
ADDITIONAL PROVISIONS FOR SEISMIC EXPLORATION AND STRATIGRAPHIC TESTS

Section
210. Submission of seismic exploration data and stratigraphic test data
220. Confidential status of information
230. Reimbursement for seismic exploration data
240. Liability

11 AAC 96.210. SUBMISSION OF SEISMIC DATA AND STRATIGRAPHIC TEST DATA. In order to assist the department in managing the leasing, exploration, and development of oil and gas resources underlying state land, and to achieve the purposes of AS 38.05.180(a), the director will, under the following circumstances, require submission of seismic exploration data and stratigraphic test data as a condition of the issuance of a land use permit to conduct seismic exploration field operations or to drill a stratigraphic test well:

(1) Within 30 calendar days after termination of any seismic exploration, the permittee shall notify the director, in writing, of all seismic exploration data obtained under the permit. Within 30 days after completion of the initial processing of the seismic exploration data, the permittee shall notify the director, in writing, of the availability of these processed seismic exploration data. The director reserves the right to inspect and require submission of seismic exploration data obtained under the permit for five years after notification by the permittee that initial processing has been completed. The permittee shall provide access to and upon request submit a reproducible copy of all sesmic exploration data that are required by the director.

(2) Unless the director grants an extension upon the permittee's written request, the permittee shall provide access to and upon request submit a reproducible copy of all test data acquired from a stratigraphic test well not later than 30 dyas after the well is plugged or abandoned. (Eff. 3/21/81, Reg. 77; am 8/19/84, Reg. 91)

Authority: AS 38.05.020 AS 38.05.180
AS 38.05.035 AS 38.05.850

11 AAC 96.220. CONFIDENTIAL STATUS OF INFORMATION. All seismic exploration data and stratigraphic test data submitted under this chapter will be kept confidential upon the request of the person supplying the information. This confidentiality requirement is subject to the following provisions:

(1) The director will disclose confidential seismic exploration data or stratigraphic test data, submitted under this chapter, to a third party only if the disclosure is for the storage, processing, reprocessing, and interpretation of the data for the state. However, before the disclosure, the third party must agree in writing that it will not disclose the data or associated information derived or generated from the data to any other party and that it will not acquire any interest in the land evaluated by the data. The third party shall execute and post a bond in an amount to be determined by the director. The bond must be to the benefit of the state and the permittee.

(2) If the director obtains the consent of the permittee in writing, the director will, in his or her discretion, disclose confidential seismic exploration data or stratigraphic test data submitted under this chapter to the Minerals Management Service and the Bureau of Land Management of the United States Depatment of the Interior, without reference to the purpose for which the disclosure is made. However, before the disclosure, a responsible officer of the United States Department of the Interior must agree in writing to keep the data and any associated information derived or generated from the data confidential. Copies of the data submitted under this chapter will not be given to the Minerals Management Service or the Bureau of Land Management; however, the Minerals Management Service and the Bureau of Land Management may, on the premises of the department, participate in the interpretation of the data. (Eff. 3/21/81, Reg. 77; am 8/19/84, Reg. 91)

Authority: AS 38.05.020 AS 38.05.180
AS 38.05.035 AS 38.05.850

11 AAC 96.230. REIMBURSEMENT FOR SEISMIC EXPLORATION DATA. (a) The state will reimburse the permittee for all reasonable costs directly incurred by the permittee because of the submission of seismic exploration data to the division under 11 AAC 96.210(1). Reimbursable expenditures are the costs of reproduction and shipping related to the submission of seismic exploration data to the division.

(b) The state will not reimburse the permittee for any indirect costs incurred by, or indirect effects on, the permittee for the time, personnel, or equipment used to prepare the seismic exploration data for submission to the division.

(c) The division will initiate reimbursement to the permittee for costs described in (a) of this section within 30 days after receipt of a legible copy of the seismic exploration data. (Eff. 3/21/81, Reg. 77; am 8/19/84, Reg. 91)

Authority: AS 38.05.020 AS 38.05.180
AS 38.05.035 AS 38.05.850

11 AAC 96.240. LIABILITY. (a) If, after submission of the seismic exploration data or stratigraphic test data, the permittee determines that errors exist in the data submitted, the permittee shall inform the division of the errors and, as soon as practicable, shall submit any corrected data.

(b) The permittee is not responsible for any actions the division takes in the interpretation or use of the seismic exploration data submitted by the permittee. (Eff. 3/21/81, Reg. 77; am 8/19/84, Reg. 91)

Authority: AS 38.05.020 AS 38.05.180
AS 38.05.035 AS 38.05.850

ARTICLE 3.
GENERAL PROVISIONS

Section
250. Definitions

11 AAC 96.250. DEFINITIONS. In this chapter

(1) "land use activity" means any use of or entry on state land for any purpose, including but not limited to exploration, hunting, recreation, and access;

(2) "director" means the director of the division of lands in the Department of Natural Resources, or an authorized representative of the director;

(3) "department" means the Department of Natural Resources;

(4) "processing" means the preparation of data, by computer or other device, which enhances the data;

(5) "seismic exploration" means the survey of the earth's surface or the use of seismic methods to gather data that may be used to determine subsurface geologic characteristics;

(6) "seismic exploration data" means data, including information necessary to locate and identify that data, derived from seismic exploration of state land and initially processed to a level comparable to that of the data distributed to participants in a group seismic survey by use of techniques used to render the data in a format ready for geological interpretation for the first time; such techniques include but are not limited to amplitude recovery, deconvolution, static corrections, velocity analysis, normal moveout corrections, common depth point stacking, digital filtering and migration. "Seismic exploration data" may include navigation tapes, velocity spectra, final stack sections, true amplitude sections and migrated sections: but does not include, and the applicant is not required to submit to the director

(A) magnetic tapes other than navigation tapes; and

(B) data that would otherwise be included, but which the permittee or a contractor working on behalf of the permittee does not obtain or prepare;

(7) "stratigraphic test" means the drilling of a well to a sufficient depth to measure the geologic, geophysical, and engineering parameters used for determining an area's oil and gas potential;

(8) "stratigraphic test data" means all logs, surveys, samples, and tests taken in association with the drilling and testing of a stratigraphic test well and includes but is not limited to, mud logs, electrical logs, density logs, sonic logs, neutron logs, gamma logs, dip-meter surveys, velocity surveys, directional surveys, core descriptions, sample descriptions (including descriptive palynology and paleontology), fluid analyses, drillstem tests, formation tests, and periodic drilling and operations reports. (Eff. 1/1/70, Reg. 32; am 3/21/81, Reg. 77; am 8/19/84, Reg. 91)

Authority: AS 38.05.020 AS 38.05.180
AS 38.05.035 AS 38.05.850

Editor's Note: 11 AAC 96.250(1) and (2) are derived from former 11 AAC 96.150 which was repealed in 3/21/71. The history note set out after this section includes the history of 11 AAC 96.150 before the repeal of that section.

ATTACHMENT G
Interagency Placer Mining Enforcement
Priorities 1987"

INTERAGENCY

PLACER MINING ENFORCEMENT PRIORITIES

1987

State of Alaska

Department of Environmental Conservation

Department of Fish and Game

Department of Natural Resources

ENFORCEMENT PRIORITIES
1987 INTER-AGENCY PLACER MINING GUIDELINES

During the 1987 placer mining season, the state will emphasize both protection of water resources, including community drinking water sources, fish and recreational uses, and technical assistance to miners to help them meet enforcement standards. As in 1986, the enforcement guidelines will be focused on priority streams. Criteria used to define "priority streams" and a listing of these streams are found in Section II. Other streams will be visited based on reported water quality problems (i.e., complaints).

The state's placer mining enforcement policy will focus on flagrant violators who do not implement minimum pollution control measures. Water quality samples will be taken upstream of mining operations to ascertain background levels of natural or human caused pollutants. The state will not take enforcement action against a miner for a violation of water quality standards where the violation results from upstream sources.

The State of Alaska will retain three of the designated priority drainages across the state (Chatanika and George Rivers, and Peters Creek) as special areas for an intensive effort to achieve compliance with Alaska Water Quality Standards again during the 1987 mining season. Miners operating on these streams will receive special assistance, upon request, to develop plans of operation. Tri-agency applications and plans of operation for mines in these watersheds will receive an intensive coordinated review and analysis for adequacy and likelihood of meeting water quality criteria. Applications and plans judged unlikely to achieve substantial compliance with water quality standards will be rejected. Sites for which state authorizations are issued after approval of technically adequate plans of operation will be monitored for compliance on a regular basis throughout the mining season.

Section I. - GENERAL

A. During the summer field season of 1987, the state resource agencies will carry out the following tasks subject to available funding.

   1. Field monitoring will focus on priority streams, which are listed in Section II of this directive. It is the state's goal for its 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.

2. Miners who are in substantial, but not full compliance with water quality standards, are encouraged to contact the appropriate state agencies for technical assistance to aid in achieving full compliance.

3. Field trips will be coordinated among ADEC, ADF&G, and ADNR. Each agency will maintain a log of where site visits have been conducted by staff.

4. Agency staff will respond to complaints to the extent practicable. ADEC will maintain a log of all complaints and follow-up actions taken by the state agencies.

5. To the extent practicable, field surveillance, monitoring, and enforcement will be coordinated between state agencies, EPA, and federal land management agencies (e.g., BLM and NPS). ADEC will also maintain a log of where site visits have been conducted by federal agency staff.

6. Upon arrival at a mining site, agency staff will, when practical, first attempt to contact the responsible operator and present identification. The miner will be urged to accompany agency staff during inspections.

7. Field trip reports, including data analysis on any water samples taken, will be completed for each trip and copies will be provided to state and federal agencies. Copies of any Notices of Violation will be provided to state and federal agencies as soon as possible after issuance.

Agency staff will advise miners that, upon request by a miner, they will be provided with a sealed set of duplicate samples taken at the same time and location as the samples to be used in a possible enforcement action.

B. Enforcement actions will generally fall into one of two categories, as listed below:

1. Formal Notice of Violation (Noncompliance will be formally documented in writing. When an NOV is issued, follow-up actions or additional site visits will occur);

2. Formal Legal Action (Assistance will be solicited from the Department of Law for legal actions).

C. Criteria for selection of enforcement action will be as follows.

The initial threshold of enforcement action will be based upon the specific circumstances of the observed violation

and may include initial formal legal action. In general, however, the following criteria will be utilized for selecting appropriate initial action.

1. Notices of Violation (NOVs) will be issued for the following situations:

   a. violations of State Water Quality Standards for sediment as measured by Imhoff Cone upstream and downstream of operations or discharges;

   b. on the "special priority" streams listed in Section II.B.1, violations of State Water Quality Standards for turbidity when associated with noncompliance with approved plans of operation;

   c. failure to comply with timing restrictions or operational procedures or stipulations that refer to restoration, rehabilitation, erosion control, etc. set forth in state and federal permits;

   d. blockages of fish streams; or

   e. violations of settling pond effluent limits for settleable solids as certified in NPDES permits.

   NOVs will usually be issued on-site at the time of inspection. NOVs may advise a series of steps or actions that a miner may take to correct the violation and indicate a date for reinspection. Issuance of or compliance with an NOV does not preclude further or separate legal action based upon violations described in the NOV.

2. Under any of the following situations, formal legal action usually will be taken:

   a. failure to obtain agency permits or certifications;

   b. acts which result in significant blockage or destruction of a fish steam;

   c. failure to construct a settling pond or a bypass around an active mining site;

   d. failure to maintain properly a settling pond, as shown by Imhoff cone testing of solids in pond effluents;

   e. failure to comply with an NOV issued according to the guidance of the previous section.

If a legal action is pursued because of a violation described in "a" through "e" of this section, the Department of Law may, in its course of action, seek an injunction or allege or bring into court an action which specifies all violations of water quality standards, including turbidity, any violations of permit stipulations and conditions, and any other violations of any regulations or permits.

3. As circumstances allow, legal action will be determined after consultation with DEC, DNR, DF&G, and the Department of Law. Consultation with appropriate federal agencies such as the Environmental Protection Agency, National Park Service, Bureau of Land Management (BLM), and Fish and Wildlife Service may occur. Generally, the type of legal action depends upon

   a. the degree of severity of violation, as measured against the Water Quality Standards, and

   b. the sensitivity of and degree of impacts to receiving waters.

Section II. - PRIORITY DRAINAGES

A. Criteria for selection of priority drainages include

1. use as sources of drinking water;

2. designation of stream as important to spawning, rearing, or migration of anadromous fish (AS 16.05.870);

3. potential for blockage of movements by anadromous fish (AS 16.05.840) or resident fish;

4. actual presence and abundance of fish and quality of fish habitat;

5. designation by ADF&G as an "index stream" used in aerial surveys of returning spawning salmon;

6. potential for conflicts involving commercial or recreational fishery uses;

7. potential for conflicts involving subsistence use, including fish, waterfowl, furbearer, and domestic uses;

8. likelihood of conflicts involving canoeing, kayaking, and other boating uses;

9. existence of naturally clear water, with a natural background turbidity of less than three NTU; and

10. history of significant complaints regarding water quality problems.

B. Proposed priority drainages will be announced at the Placer Mining Annual Conference in Fairbanks in the spring of 1987.[1]

1. The following streams have been designated "special priority" streams for the purposes of enforcement in 1987. For mines on these streams, Tri-Agency applications and plans of operation will receive an intensive and thorough review by the agencies to ensure that best mining practices are being implemented. Miners who operated on special priority streams in 1986 under approved plans should resubmit the approved plans for that operation to the agency reviewers. For new operations or those not operating in 1986, miners may be asked to visit agency offices to discuss their applications and modify their proposed plans of operation, if necessary, prior to mining. State agency field staff will inspect the mining operations on these streams as needed to ensure compliance with the approved plans of operation. Field staff will routinely sample and monitor the water quality of these streams to measure the expected improvements.

   a. Northern Region:
      Chatanika River (except Goldstream Creek)

   b. Southcentral Region:
      Peters Creek

   c. Western Alaska:
      George River

Note: This list is unchanged from 1986.

2. The following streams have been designated "priority" streams. Agency staff will review Tri-Agency applications and plans of operation and offer technical assistance to miners to encourage good mining practices.

---

[1] The following "inactive" priority streams are expected to have little or no mining activity occurring in 1987. As time allows, agency staff will sample these streams to determine natural or background conditions. Northern Region: Salcha River, Hogatza River, Bearpaw River, Goodpaster River, Boulder Creek, American Creek/Fish Lake, Beaver Creek, Tozitna River. Southcentral Region: Lake Creek, Little Susitna River, Kenai River, Theodore River, Lewis River, Sixmile River.

Agency field staff will inspect mining operations on these streams to ensure compliance with the settling pond effluent standard of 0.2 ml/l settleable solids. Water quality monitoring is planned for these streams.

a. Northern Region:
   - Chena River
   - Solomon River
   - South Fork of the Koyukuk
   - Cripple River
   - Minook Creek
   - Tolovana River
   - Fortymile River
   - Birch Creek [2]

b. Southcentral Region:
   - Willow Creek
   - Chunilna Creek
   - Cache Creek
   - Resurrection Creek
   - Crescent Creek
   - Quartz Creek

c. Western Alaska:
   - Tuluksak River
   - Salmon River
   - Taylor Creek
   - Crooked Creek

---

[2] The BLM has indicated an interest in devoting extra effort in an overall attempt to increase the level of compliance in the Birch Creek watershed. To the extent feasible, state resource agencies will assist the BLM in its efforts.

Adopted by:

Dennis D. Kelso
Commissioner, DEC

March 20, 1987
Date

Don W. Collinsworth
Commissioner, DF&G

3-21-87
Date

Judith M. Brady
Commissioner, DNR

3-23-87
Date

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

October 19, 1984

MEMORANDUM

TO: Representative Bob Bettisworth

FROM: Gretchen Keiser, Legislative Analyst

RE: State Revenues and Secondary Benefits from Mining Operations
Research Request 85-029

You requested this agency to provide information on recent and projected State revenues from mining operations. You asked us to consider various mining projects, including Red Dog, Quartz Hill, Greens Creek, Usibelli Coal, Beluga Coal, and Alaska Asbestos. We were also asked to provide information on secondary benefits, such as employment and royalties to Native corporations.

This memorandum summarizes information obtained during conversations with mining company representatives and State officials in the Departments of Revenue, Commerce and Economic Development, Law, and Natural Resources. In addition, we reviewed several State analyses and federal environmental impact statements on various mining proposals.

The first section of this memorandum briefly discusses the sources of State revenues from mining operations and summarizes the revenues over the past few years. The second section presents projections of State revenues from currently active operations as well as revenues and secondary benefits from various mining proposals which have been recently analyzed (i.e., Red Dog, Quartz Hill and Greens Creek). The final section discusses several additional mining prospects which are currently being investigated to some degree but are less fully analyzed than the three previously mentioned proposals.

Recent State Revenues from Mining Operations

State revenues are generated from mining operations from the following sources:

- Alaska [Corporate] Net Income Tax (AS 43.20)
- Mining License Tax (AS 43.65)
- Coal Lease Bonus, Royalty and Rental (AS 38.05.150)
- Upland Mineral Leasing Rental and Royalty (AS 38.05.205)
- Offshore Prospecting Permit and Lease Rentals (AS 38.05.250)
- Sale of Sand and Gravel

The Alaska [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 investment and job credits and yields the Alaska Corporate Net Income Tax payable to the State.

In 1982, 54 tax returns from mining operations (of which 19 had taxable income) generated about $21,000 in tax revenues. This represents one-tenth of one percent of the nonpetroleum corporate income tax revenues which were collected in 1982 ($21.1 million). Table 1 summarizes the corporate net income taxes paid to the State by the mining sector in 1980 and 1982.[1] The reduction in tax revenues between 1980 and 1982 reflects, in part, changes in Alaska corporate tax law in 1981. The amendments reduced the tax rates and increased the allowable investment tax credit to the first $20 million in qualified investments.

In 1984, the Alaska Legislature further amended Alaska corporate tax law to allow a special industrial incentive tax credit on "...the first $250 million of qualified investment for each taxable year after December 31, 1984 for exploration, drilling of wells, development, or mining of the minerals and other natural deposits other than sand and gravel..." [AS 43.20.042(b)]. The major effect of this new investment tax credit will likely be to reduce potential State tax revenue in the 1990s when the various large mining projects (with considerable capital investments) commence production. Estimates of reduced tax revenues from the Red Dog and Quartz Hill proposals due to the investment tax credit are considered in Table 2 in the next section of this memorandum.

The Mining License Tax is a net income tax which incorporates a graduated tax rate schedule up to a maximum liability of $4,000 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. The above-mentioned special industrial investment tax credit will also apply against a mining corporation's tax liability under the Mining License Tax.

State revenues from the Mining License Tax averaged about $125,000 per year between FY 80 and FY 83 and increased to about $340,000 in FY 84 (Table 1). The dramatic increase in FY 84 revenues is due, to a large extent, to the increased sand and gravel mining operations to accommodate the demand for these construction materials in Southcentral Alaska.

---

[1]1982 is the most recent year for which detailed nonpetroleum corporate tax revenue data are available from the Alaska Department of Revenue.

TABLE 1

State Revenues From Mining Activities: 1980 - 1984

REVENUE SOURCE	1980	1981	1982	1983	1984
Alaska Corporate Net Income Tax[a]	$ 29,600	n/a	$ 21,000	n/a	n/a
Mining License Tax[a]	138,300	$56,000	158,800	$ 148,800	$341,800
Coal Lease Sale Bonuses[b]	-0-	-0-	-0-	-0-	-0-
Coal Lease Royalties[b]	89,000	80,000	81,000	73,400	78,400
Coal Lease Rentals[b]	51,000	52,000	52,000	85,200	83,200
Upland Mineral Lease Rentals[b]	-0-	-0-	-0-	-0-	-0-
Offshore Prospecting Permits and Leases[b]	n/a	18,900	20,200	30,600	29,600
Sale of Sand and Gravel[c]	n/a	n/a	n/a	3,600,000	2,500,000

[a]Actual revenues obtained from the Alaska Department of Revenue.

[b]Estimated revenues based on information obtained from the Division of Mining, Alaska Department of Natural Resources.

[c]Actual revenues obtained from the Division of Land and Water Management, Alaska Department of Natural Resources.

* * * * *

Coal Lease Bonuses, Royalties and Rentals are collected as a result of the sale, exploration and production of coal leases on State lands. The State has not received any bonuses over the past five years because no competitive leases have been sold. Annual coal royalties have averaged about $80,000 between 1980 and 1984 and reflect the relatively stable production from the Usibelli Mine in Healy. Annual rentals have increased in the past two years because newer leases carry a $3/acre rental rather than the $1/acre rental on older leases.

Upland Mineral Lease Rentals have not generated any State revenues in the past five years for a number of reasons. Most of the State's upland acreage is open to mineral entry rather than mineral leasing. Under mineral entry, an individual makes a discovery, stakes and records a

claim, and then owns the mineral deposit as long as annual labor requirements are fulfilled. The State receives no royalties or rentals on this mineral acreage developed under this locatable mineral approach.[2]

Furthermore, most miners working other State lands which are designated for mineral leasing have received waivers of lease requirements (including rental payments) through 1985. Upland mineral leases also do not include provisions requiring the payment of royalties to the State. Finally, labor expenses can be credited against a lessee's annual rental on the mineral leases.

Offshore Mineral Prospecting Permits and Leases generated about $22,000 in State revenues in FY 84. Prospecting permits yield $3/acre in annual fees and leases $1/acre in annual rentals, although expenses can be credited against annual rentals. As in the case of upland mineral leases, the offshore mineral leases do not include provisions for royalty payments to the State should offshore mining production commence in the future.

Sale of Sand and Gravel located on State lands generates considerable annual revenue compared with other mineral activities. Prices range from 50¢/cubic yard to $1.00/cubic yard depending upon location, with much of the revenues stemming from material sales in the vicinity of the North Slope oil fields.

Projected State Revenues From Future Mining Operations

Table 2 summarizes the fragmentary information available on projected State revenues from various mining activities. In the near-term, the State may see a four-fold increase in revenues from the sale of sand and gravel to roughly $10 million annually in FY 85 and FY 86 provided that the Lisburne and Endicott Projects proceed on the North Slope. Another considerable increase in mineral revenues will result from the phasing in of a higher coal royalty rate on renegotiated leases which are expiring in the Healy field in FY 87 and FY 88. The old leases carry a 5 to 10¢/ton royalty rate, whereas newer leases yield five percent of the adjusted gross value, or roughly 50¢/ton. Under the present system of mineral entry on most State mineral lands, future non-tax revenues to the State are estimated to be minimal. However, a lawsuit which has been filed to compel the State to establish a mineral leasing system on State lands could change this revenue picture in the

---

[2]According to Mary Kaye Hession, Leasing Manager, Division of Mining, Department of Natural Resources, Alaska is the only state which follows this locatable mineral approach; all other states follow leasing procedures which generate annual revenues from mineral royalties and rentals.

future.[3] Oral arguments are scheduled before Superior Court Judge Serdahley in November in this "6i lawsuit", referring to the section of the Alaska Statehood Act which the plaintiffs argue requires the State to dispose of mineral deposits through a leasing approach.

Estimated revenues from the proposed mining projects at Red Dog, Quartz Hill and Greens Creek would greatly augment existing mineral revenues to the State. Very rough estimates suggest that these three projects could generate annual corporate and mining license tax revenues of approximately $10 million (in 1989) to $21.5 million (in 1992 - 1996).[4] These projections assume that the projects will begin production as currently scheduled in 1987 (Greens Creek) and 1988 (Red Dog and Quartz Hill) and will reach targeted mine production levels.

Analyses of the Red Dog, Quartz Hill and Greens Creek mining projects identify secondary benefits which would result from these developments. These benefits are briefly discussed below:

The Red Dog Zinc-Lead-Silver Mine[5] is estimated to create 350 to 400 permanent jobs with an annual payroll of roughly $11 to $13 million once full production is attained in 1993. Approximately 50 to 75 percent of the jobs would be held by regional residents, with another 10 to 40 percent of the jobs being held by other Alaskans. In addition, about 225 secondary and indirect jobs would be created.

Under a most probable metal price scenario, the Office of Management and Budget (OMB) estimated that the NANA Regional Corporation will receive average annual advance royalties of $25 million prior to 1991 and thereafter, average annual net proceeds royalties of $49 million. OMB estimates that about $5.8 million will be paid in annual State taxes on the royalties received in the 1990s.

---

[3]Trustees for Alaska, a public interest law firm, filed the suit on behalf of the village of Minto; Dinyea Corp. (Stevens village corporation); Nunam Kitlutsisti (nonprofit native organization in Bethel); Alaska Independent Fishermen's Marketing Association and several conservation organizations.

[4]These mineral revenues represent considerably less than one percent of the State's projected petroleum revenues in those same years: 1989 ($3.07 billion) and 1992 ($2.96 billion).

[5]The information presented is based on the Red Dog Project Analysis, Alaska Department of Commerce and Economic Development, February 1984.

TABLE 2

Projected State Revenues From Future Mining Activities
(In Thousands of Dollars)

Revenue Source	1985	1986	1987	1988	1989	1990	1991-2000
SHORT-TERM							
Alaska Corporate Net Income Tax	n/a	n/a	n/a	n/a			
Mining License Tax	300	300	n/a	n/a			
Coal Lease Sale Bonuses	10	10	0	n/a			
Coal Lease Royalties[1]	0	48	213	800			
Coal Lease Rentals	93	103	103	n/a			
Upland Mineral Lease Rentals	Anticipated to be minimal						
Offshore Prospecting Permits and Leases	22	20	82	n/a			
Sale of Sand & Gravel	10,600	10,000	5,700	n/a			
LONGER-TERM							
Red Dog Mine (production in 1988)[2]							
CIT	-	-	-	estimated average: $4,100/yr			
MLT	-	-	-	no MLT until 1991; $4,600/yr			
Quartz Hill Mine (production in 1988)[3]							
CIT	-	-	-	estimated average: $4,500/yr			
MLT	-	-	-	no MLT until 1991; $7,000/yr			
Greens Creek[4]							
CIT	-	-	estimated total taxes of $12.5 million between 1987 and 1996				
MLT	-	-					

CIT = Alaska Corporate Income Tax
MLT = Mining License Tax

Source: House Research Agency, October 1984.

Footnotes Accompanying Table 2

[1]Previous overpayments of royalties by Usibelli Mine are to be credited in FY 85 and 86. The doubling of Usibelli production, which reflects the estimated 800,000 ton annual coal shipments to Korea beginning in 1985, will in fact increase State royalty revenues considerably. The increases in FY 87 and 88 royalties also represent the new five percent adjusted gross royalty rate to be applied to expiring leases which will be renegotiated.

[2]The annual tax payments are based on November 1983 estimates from Cominco presented in the Red Dog Project Analysis (February 1984, Department of Commerce and Economic Development). The earlier estimates were adjusted to 1984 dollars and reduced by $2 million/year (about 18 percent) to reflect about $22 million in tax savings between 1989 and 1999 estimated by Cominco under the recently enacted investment tax credit.

[3]The annual tax payments are based on May 1982 estimates from U.S. Borax presented in the State Fiscal Analysis Quartz Hill Molybdenum Project (May 1982, Office of the Governor Policy Analysis Paper No. 82-5). The annual estimates were adjusted to 1984 dollars and reduced by 18 percent to reflect an estimated tax savings under the new investment tax credit.

[4]State tax estimates were obtained from Mr. Pete Richardson, Greens Creek Project Manager based in Juneau.

Cominco estimates that capital investments of $390 million will be required at the mine site and to construct transportation infrastructure. If the port facilities are used for regional freight hauling, regional residents are estimated to save $2 to $3 million annually in shipping costs, or roughly $418 per resident each year.

The Quartz Hill Molybdenum Project would provide about 1,000 permanent mine jobs once full production of 80,000 tons/day is reached in about 1993. The Draft Environmental Impact Statement (DEIS) prepared by the U.S. Forest Service estimates an additional 1,000 indirect and secondary jobs under full mine production. A direct employees' payroll of $48 million annually is estimated between 1990 and 2005. The project is located on federal lands and therefore no mineral royalties would accrue to the State or regional native corporation, unlike the Red Dog Mine which would be located on NANA land.

U.S. Borax currently estimates capital investments of roughly $970 million in the mine and processing facilities and transportation infrastructure. The Ketchikan Gateway Borough would receive property and sales tax revenues from the project-induced population increase of an estimated 2,500 people and from greater business activity. The mine site, however, is located outside the borough boundaries and would not generate local property tax revenues.

The Greens Creek Zinc-Lead-Silver-Gold Mine is quite modest in comparison with the other two mining proposals. According to Pete Richardson, Greens Creek Project Manager, the 600 ton/day underground mine would provide 136 permanent jobs beginning in late 1987 or 1988. The mine is currently estimated to have a 10 to 12-year life, with the potential for a 17 to 20-year mine life.

The annual direct payroll would be roughly $6.5 million for workers, all of whom would commute from Juneau (18 miles to the Northeast). Secondary employment is estimated at 142 jobs. The Final EIS prepared by the U.S. Forest Service in 1983 estimated about $1 million in local tax revenues for the City and Borough of Juneau from property and sales tax growth induced by the mine operation.

Update on Other Mining Proposals

There are several other mineral deposits across the state which have been the subject of exploratory activity to varying degrees over the past few years. Some projects have also been analyzed for their economic feasibility. Available information on several of these projects is presented below:

Bering River Coal Project exploratory activities continued in 1984 and will also occur in 1985. Depending upon the extent and location of mineable reserves, the project could commence production at one million tons/year in the early 1990s. The joint venture between Chugach Native

Inc. and KADCO (a Korean corporation) could eventually ship up to 2 million tons/year to Korea. The project could provide roughly 500 permanent jobs and contribute to the construction of a multipurpose port facility. The mine would also provide annual royalties to the native corporation which owns the land.

Matanuska Coal Field is being explored by the Valley Coal Company (a partnership of Hawley Resource Group, Rocky Mountain Energy and Sun Eel Shipping Co). According to Chuck Hawley, operator for the partnership, the coal mine could begin production in 1991 if the permitting process commences in 1985. A 600,000 tons/day mine would employ 80 people and may be feasible as the supplier for a mine mouth coal-fired power plant. According to Mr. Hawley, near-term export of Matanuska coal to the Far East does not appear to be very likely because of more competitive coal prices from South Africa, Australia and Canada. According to internal feasibility figures, a 600,000 tons/year mine supplying a mine mouth utility could generate roughly $300,000 in royalties and $145,000 in taxes to the State each year.

The Beluga Coal Field has been the site of exploratory activities by both Placer U.S. and Diamond Alaska Coal Company (in a joint venture with Chuitna Coal Company). Diamond Alaska completed baseline studies in 1984 and may begin construction in late 1986. An initial coal production of 2-4 million tons/year could be attained by 1988 or 1989, depending upon the marketing strategy. It has been estimated by the State Office of Mineral Development that full development of all Beluga coal properties could eventually result in 1,000 permanent jobs.

The Alaska Asbestos Project in eastern interior Alaska did not sustain any field activity in 1984. Production timetables have slipped from earlier estimates of 1990 primarily because of the weakness in world asbestos prices. Environmental health problems with asbestos have also negatively affected domestic markets.

Considerable exploratory activity has occurred at a number of other mineral deposits in the state. The Ambler Mining District in the Kobuk River valley in northwest Alaska is a mineral rich province with a combined reserve base of roughly 100 million tons. The Delta mineral belt in the eastern Alaska Range contains at least 35 base-metal massive sulfide deposits. In addition, the Noatak zinc belt in northwest Alaska near the Red Dog project appears to be a very good deposit in comparison with lead-zinc properties elsewhere in the world. The remoteness of these deposits, which necessitates considerable capital investments in transportation systems, and/or the world metal prices and markets appear to place production and subsequent State revenues from these mineral deposits well into the future.

We hope that this information will be useful. Please contact us if we can be of further assistance.

GK

MINERAL TITLE EXAMINATION

by

TERRY S. MALEY

First Edition
August, 1984

Mineral Land Publications
P.O. Box 1186
Boise, Idaho 83701
(208) 343-9143

I. Mineral in Character

Land and Mineral Cases Requiring Mineral in Character Classifications

Prior to enactment of FLPMA on October 21, 1976, disposals under the mining laws and public land laws required that the land be classified as either mineral in character or nonmineral in character. One exception to this requirement was disposals under the Stockraising Homestead Act. In this type of homestead, no mineral classification was necessary because all minerals were reserved to the United States.

Land Disposals

A determination that lands are mineral in character generally results in a decision by the Interior Department rejecting the application for entry under the public land laws. Since passage of FLPMA, most of the homestead and land disposal laws requiring a mineral in character determination have been repealed. Among the few land actions that still require a mineral in character determination are Indian allotments, Carey Act grants, desert land entries, railroad selections and certain disposals in Alaska. Land sales under section 203 and 206 of FLPMA require a mineral potential report.

Land Exchanges

Prior to FLPMA, all exchanges required a mineral in character determination. The purpose of this determination was to establish whether locatable, salable or leasable minerals existed in sufficient quantities to warrant a classification of mineral in character. Also if mineral values were present, they were appraised to ascertain their value. Either party may reserve minerals; however, generally where both the federal and the nonfederal lands are mineral in character and the values are comparable, neither party will reserve minerals. The land exchange is one of the few types of land actions where the United States has a variety of options available to consummate an exchange.

Mill Sites

R.S. 2337, as amended by the Act of March 18, 1960 (30 USC 42) authorizes the location of mill sites only on lands nonmineral in character.

Legal Basis for Mineral Reservation

The legal basis for reserving mineral lands from disposal under the public land laws originates in the Act of July 4, 1866 (14 Stat. 86) where it is stated "in all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law." RS 2318; 30 USC 21 (1976).

Types of Minerals

Mineral lands not only include metalliferous lands, but all lands that are chiefly valuable for deposits of a mineral character which are useful in the arts or valuable for purposes of manufacture. *Northern Pacific Railway Co. v. Soderberg*, 188 US 526 (1903). In *Laden v. Andrus*, 595 F2d 482 (1979), the Court discussed the *Northern Pacific Railway* case as follows:

> The difficulty in ascribing a meaning to the word "mineral" in a given statutory context was early recognized in *Northern P. R. Co. v. Soderberg*, 1903, 188 US 526, 530. There the issue was whether a deposit of granite rendered certain lands "mineral" and as such excepted from a grant of territory from the United States to the plaintiff railroad. The Court said:
>
> > "The word 'mineral' is used in so many senses, dependent upon the context, that the ordinary definitions of the dictionary throw but little light upon its signification in a given case. Thus the scientific division of all matter into the animal, vegetable, or mineral kingdom would be absurd as applied to a grant of lands, since all lands belong to the mineral kingdom, and therefore could not be excepted from the grant without being destructive of it. Upon the other hand, a definition which would confine it to the precious metals, gold and silver, would so limit its application as to destroy at once half the value of the exception. Equally subversive of the grant would be the definition of minerals found in the Century Dictionary: 'any constituent of the earth's crust;' and that of Bainbridge on Mines: 'All the substances that now form, or which once formed, a part of the solid body of the earth.'

Definition of Mineral in Character

There is no definition of "mineral in character" in the statutes; however, over the years, the courts have defined it in a variety of ways. Perhaps the most authoritative and enduring test for determining the mineral character of land was announced by the United States Supreme Court in *Diamond Coal & Coke Co. v. U.S.*, 233 US 236 (1914). The Court said at 239-240:

> [I]t must appear that the known conditions... were plainly such as to engender the belief that the land contained mineral deposits of such quality and quantity as would render their extraction profitable and justify expenditures to that end.

This same test was quoted with approval in *U.S. v. Southern Pacific Co.*, 251 US 1, 14 (1919), *Laden v. Andrus*, 595 F2d 482, 488 (9th Cir 1979), *McCall v. Andrus*, 628 F2d 1185, 1188 (9th Cir 1980) and numerous other Interior Department and Federal court cases.

Definition May Include Evidence for Determination

In *Southern Pacific Co.*, 71 ID 224, 233 (1964), the Secretary published a definition that not only included the language used in *Diamond Coal & Coke Co., supra*, but also included the type of evidence that may be used to establish mineral in character. The basis for this evidence was derived from earlier court cases. The significance of the acceptable evidence for establishing mineral in character provided by earlier court cases is described in following several pages. The Secretary's definition of "mineral in character" in *Southern Pacific Co., supra* at 233 is consistent with the two Supreme Court cases cited above; and is probably a better and more complete definition because it includes the necessary evidence which was also held to be acceptable by the two Supreme Court cases. The Secretary stated at 233:

> It is not essential that there be an actual discovery of mineral on the land. It is sufficient to show only that known conditions are such as reasonably to engender the belief that the land contains mineral of such quality and in such quantity as to render its extraction profitable and justify expenditures to that end. Such belief may be predicated upon geological conditions, discoveries of minerals in adjacent land and other observable external conditions upon which prudent and experienced men are shown to be accustomed to act.

This definition from *Southern Pacific Co., supra*, was recently quoted with approval in *U.S. v. Southern Pacific Transportation Co.*, 56 IBLA 191, 192-193 (1982).

Evidence Supporting Mineral in Character

In order to understand what is meant by "mineral in character," it is essential to have a good understanding of the types of evidence determined to establish mineral in character by the several important court cases. The applicable language from each of these cases is quoted below:

1. *Diamond Coal & Coke Co. v. U.S.*, 233 US 236, 248-249 (1914):

> An exposure to the eye of coal upon the particular lands was not essential to give them a then present value for coal mining. They were all adjacent to the outcrop and above the plane of the coal-bearing strata dipping under the valley. In alternate even-numbered sections they substantially paralleled the outcrop for 7 miles, and in two places were separated from it by only a few rods. Those to the north were opposite the company's developed mine (No. 4), and those to the south were opposite the tract acquired through Lees, upon which good coal was disclosed. The outcrop, the disclosures in the vicinity, and the geological formation pointed with convincing force to a workable bed of merchantable coal extending under the valley and penetrating these lands. These conditions were open to common observation, and were such as would appeal to practical men, and be relied upon by them in making investments for coal mining.
>
> There is no fixed rule that lands become valuable only through actual discovery within their boundaries. On the contrary, they may, and often do, become so through adjacent disclosures and other surrounding external conditions; and when that question arises in cases such as this, any evidence logically relevant to the issue is admissible, due regard being had to the time to which it must relate.

2. *U.S. v. Southern Pacific Co.*, 251 US 1, 14 (1919):

> The observable geological and other physical conditions at the time of the patent proceedings, as shown by the evidence, were as follows: The area called the Elk hills was about 6 miles wide and 15 long, and constituted an anticlinal fold or elongated dome, — an occurrence favorable to the accumulation and retention of oil. The lands in suit were about its center. From 5 to 10 miles to the west was the Temblor range, the main uplift of that region. Along the east flank of that uplift for a distance of 30 miles was a series of outcrops or exposures of Monterey (diatomaceous) shales, the source of oil in California, and porous sandstone in which oil generally finds its ultimate reservoir. These strata were of exceptional thickness, and it was apparent that oil in considerable quantity had been seeping or wasting from the sandstone. The dip of the strata was towards the Elk hills, and there were no indications of any faulting or thinning in that direction. Between the outcrop and the Elk hills upwards of two hundred wells had found the oil-bearing strata and were being profitably operated, several of the wells being on a direct line towards the lands in suit and within 3 or 4 miles of them. In and beyond the Elk hills were oil seepages and other surface indications of the existence of oil in the underlying strata, one of the seepages being near the lands in suit. Two wells had been sunk in the Elk hills, but obviously had not gone to an adequate depth and were not productive, although some oil was reached by one.
>
> Other geologists and oil operators, called by the company, gave it as their opinion that the lands were not, under the conditions stated, valuable for oil; but, as respects the

testimony of some, it is apparent that they were indisposed to regard any lands as within that category until they were demonstrated to be certainly such be wells actually drilled thereon and producing oil in paying quantities after a considerable period of pumping. This is a mistaken test, in that it takes no account of geological conditions, adjacent discoveries, and other external conditions upon which prudent and experienced men in the oil mining regions are shown to be accustomed to act and make large expenditures.

3. *Laden v. Andrus*, 595 F2d 482, 489-490 (9th Cir 1979):

> There is no fixed rule that lands become valuable . . . only through . . . actual discovery within their boundaries. On the contrary, they may, and often do, become so through adjacent disclosures and other surrounding or external conditions; and when that question arises in cases such as this, any evidence logically relevant to the issue is admissible, due regard being had to the time to which it must relate.
>
> To paraphrase *Diamond Coal & Coke*, the relevant issue is whether the known conditions existing in 1901 were sufficient to engender the belief that the Wedekind tract contained minerals of a quantity and quality that would render their extraction profitable and justify expenditures to that end. Briefly summarized, the evidence supporting the DOI's finding that the conditions in 1901 were sufficient to engender such beliefs includes: (1) the Wedekind tract is located in the heart of the so-called Wedekind mining district, which bears the name of appellants' ancestor who, in 1896-97, located the first mining claim in the area on two sections of land adjacent to the Wedekind tract; this claim later yielded a producing mine; (2) an expert mining geologist and engineer testified that the areas which were most favorable for mineralization from a geological standpoint fully covered the Wedekind tract, as well as adjacent lands from which actual production was recorded; (3) extensive mine workings existed in 1901 on sections adjacent to the southeast corner of the Wedekind tract; (4) Wedekind and other family members located, bought, and sold mining claims covering portions of the Wedekind tract during the period between 1900-1901; (5) Wedekind located yet another mining claim extending into the Wedekind tract two months after he purchased the land from the CPRC; four months after his purchase, Wedekind sold his producing mine on the adjacent property along with the various mining claims which he had located that covered portions of the Wedekind tract; and (6) miners and prospectors other than the Wedekind family located and or purchased mining claims on the Wedekind tract during the period between 1900-1902. This is enough to require that we hold substantial evidence supports the DOI's determination.

4. *U.S. v. Southern Pacific Transportation Co.*, 66 IBLA 191, 195 (1982):

> We agree with the Administrative Law Judge that the Government presented a prima facie case that the land in question was mineral in character between the date the railroad line was definitely fixed (1866) and the date of purchase by Birce (1888). The 1900 map by Lindgren indicates that the area was underlain by auriferous gravels, which also covered significant portions of the Gold Run Mining District. Past mining activity in the general vicinity indicates that these auriferous gravels contained significant values of gold which clearly "would render their extraction profitable and justify expenditures to that end." *See Southern Pacific Co., supra* at 233. Furthermore, part of the land involved in this patent application had been the site of past mining activity. Finally, in 1896, the Department canceled a patent application which included the lands in question because the land contained minerals. In view of the fact that the determination was fairly contemporaneous with the date of purchase (October 4, 1888), it is entitled to great weight.

The above-quoted cases all agree that actual discovery of minerals within the tract is not required; and that the following types of evidence support a determination of mineral in character:

1. discoveries or mines in adjacent land;
2. other external conditions that cause prudent and experienced men to act and make expenditures; and
3. favorable geological conditions within the tract.

Distinction Between "Discovery" and "Mineral in Character"

A small number of Interior and Federal court cases have distinguished between "discovery" and "mineral in character." One of the most recent Federal court statements on this subject is found in *McCall v. Andrus*, 628 F2d 1185 (1980), *cert denied* 450 US 996 (1981). The Court said at 1188 that "proof of 'discovery' requires a showing of an exposed mineral deposit on the claim while 'mineral in character' may be proved by geological inference coupled with marketability." Other pertinent cases on this subject are quoted below:

1. *State of California v. Rodeffer*, 75 ID 176, 178-179 (1968):

> Although it has been customary in contests of mining claims for the contestants to make the dual charges that no discovery has been made and that the lands embraced in mining claims are nonmineral in character, a finding

on one of the issues is normally dispositive of a controversy and makes it unnecessary to make a finding on the other issue. The reason for this is fairly obvious. Proof of the discovery of a valuable mineral deposit is concurrent proof of the mineral character of the land on which the discovery is made, and, where a discovery is shown, there is no occasion to make a separate finding with respect to the mineral character of the land on which the discovery has been made. On the other hand, a finding that there has not been a discovery normally renders moot the question of mineral character, since the discovery of a valuable mineral deposit is indispensable to the validity of any mining claim and a finding that land in a mining claim is mineral in character can not validate the claim in the absence of a showing of discovery. A finding that land is not mineral in character, of course, is necessarily a finding that a discovery has not been made upon that land.

2. *U.S. v. Bechthold*, 25 IBLA 92 (1972):

A finding that public lands were previously mineral in character does not constitute evidence of discovery. The tests, though somewhat similar conceptually, have different evidentiary standards. Furthermore, a finding of mineral in character fails to reach the issues of sufficient quantity and quality required under the prudent man test. *Converse v. Udall*, 399 F2d at 619. Also, changes in prices, costs, condition of the mine, et., must be considered since the time the previous determination was made.

3. *U.S. v. Harper*, 8 IBLA 364 (1972):

Although a finding that land is nonmineral in character is sufficient to invalidate a mining claim, the reverse is not true. To establish the mineral character of land it is not necessary to show that the land contains a valid claim, whereas to prove the validity of a claim it must be shown that a discovery has been made of a valuable mineral deposit physically exposed within the limits of the claim. The character of a tract of land as mineral may be inferred through geological inference, by the presence of minerals in substantial quantities on adjacent lands, or by other external conditions.

4. *U.S. v. Meyers*, 17 IBLA 313, 317 (1974):

Two elements must be shown under this test: (1) the quantity and quality of minerals on the claim; and (2) the prospect of success in removing, extracting and marketing the mineral. Unlike in those cases where discovery is an issue, *Henault Mining Co. v. Tysk*, 419 F2d 766 (9th Cir 1970), in a mineral character determination the quantity and quality of mineral on a claim may be established *without* the physical exposure of the mineral on the claim. A finding that land is mineral in character may be based

wholly on inferential evidence: geological conditions; discoveries of minerals in adjacent land; and other observable external conditions upon which a prudent and experienced person would rely. *Southern Pacific Co.*, 71 ID 224, 233 (1964); *U.S. v. Tobiassen*, 10 IBLA 379, 383-84 (1973). The acceptance of these kinds of less reliable evidence to support a determination that land is mineral in character distinguishes this test from the discovery standard approved in *U.S. v. Coleman*, 390 US 599 (1968).

5. *Laden v. Andrus*, 595 F2d 482, 487 (9th Cir 1979):

...appellants argue that there must exist an actual "discovery" of valuable minerals on land before it may properly be classified as being "mineral" in character, and that the test for determining "mineral land" is more stringent than the test for proving a "discovery." Although it is true that a "discovery" has always been considered a prerequisite to the location of a mining claim under American mining law, "proof of known mineral character is not dependent upon a showing of actual discovery." *Standard Oil Co. v. U.S.*, 107 F2d 402, 414-15 (9th Cir), *cert. denied*, 309 US 654, 673.

Mineral in Character and the Ten Acre Rule (Placer Claims Only)

In *Ferrell v. Hoge*, 29 ID 12, 13, 15 (1889), The Secretary discussed the rationale for inquiring into the mineral character of placer mining claims upon establishing that a discovery is made on one portion of the claim:

> It is contended...that a discovery of placer mineral deposits will support a location of twenty acres by a single individual or one hundred and sixty acres by an association of eight persons whether the mineral deposits extend throughout the entire claim or are confined to the immediate locality of the discovery.
>
> Considering all the statutes relating to mining claims it seems clear that it was not their purpose to permit the entire area allowed as a placer claim to be acquired as appurtenant to placer deposits irrespective of their extent. Under the law discovery of mineral deposits is an essential act in the acquisition of mineral land, and while a single discovery is sufficient to authorize the location of a placer claim and may, in the absence of any claim or evidence to the contrary, be treated as sufficiently establishing the mineral character of the entire claim to justify the patenting thereof, such single discovery does not conclusively establish the mineral character of all the land included in the claim so as to preclude further inquiry in respect thereto.
>
> It would not comport with the spirit of the mining laws to hold that where a placer mineral deposit is discovered in

any forty acre subdivision of the public lands, an association of eight persons is authorized to embrace in a mining location founded upon such discovery three other contiguous forty acre subdivisions of nonmineral land and to receive a patent for the same as a part of their mining claim, and yet this would logically follow if the contention of these claimants were sustained.

In *U.S. v. Meyers*, 17 IBLA 313 (1974), the Board held that each 10-acre subdivision of an association placer claim must be mineral in character; if a 10-acre tract is nonmineral in character, it must be excluded from the patent. The Board also applied this 10-acre rule to an association gold placer claim. In this example the Board said:

> A discovery on one 10-acre portion of an association placer mining claim does not establish the mineral character of the entire claim. Even though there is a discovery on one 10-acre portion, if any other 10-acre part is nonmineral in character, that part or parts of the claim must be excluded from the patent.
>
> The gold-bearing gravels on the clear listed area are located on or near the S 1/2 SE 1/4 NW 1/4 NE 1/4 and appear to extend into that five-acre parcel (Tr. 43, Ex. 1). Certainly the inference that it does is properly drawn. In addition, in the northern-most trench on the 5-acre tract, Meyers testified that one sample taken in that area indicated values of $10 per cubic yard (Tr. 110), and other sampling also indicated gold values (Tr. 67). The presence of all these factors in combination is sufficient to engender the belief that this five-acre section is mineral in character even though there is insufficient *exposure* of minerals to justify the finding of a discovery. We find that the S 1/2 SE 1/4 NW 1/4 NE 1/4 is mineral land.
>
> Although there are some differences in the proof available to show that the remaining 10-acre parcels are mineral lands, the proof for each is essentially similar. Limited sampling has revealed generally low gold values (*i.e.* from nothing to $.35 per cubic yard) and only small isolated pockets of potential gold-bearing values. These values are in stark contrast to high values found on the clear listed portion or to the recovery of 100 ounces of gold on the parcel the Judge declared mineral in character. The stream below the bend from the center of the clear listed area to the south is almost entirely devoid of gravel (Tr. 25). The finding of traces of gold or low-grade gold-bearing gravels in limited quantities does not demonstrate, without more, that land is mineral in character.

In *McCall v. Andrus*, 628 F2d 1185 (9th Cir 1980), *cert. denied* 450 US 996 (1981), the Ninth Circuit Court upheld the ten-acre rule and also that only one discovery is required for a claim, regardless of size. The Court said at 1188:

> ...30 U.S.C. §§35 and 36 restrict the *maximum* size of a placer mining claim to twenty acres per individual, up to 160 acres for an association claim. These sections do not provide, however, that land within a placer claim that does not contain valuable minerals can be purchased under §22. The Interior Department has held:
>
> > Considering all the statutes relating to mining claims it seems clear that it was not their purpose to permit the entire area allowed as a placer claim to be acquired as appurtenant to placer deposits irrespective of their extent.
>
> *American Smelting & Refining Co.*, 39 LD 299, 301 (1910). The Department established a rule that, when challenged, the claimant must show that each ten-acre tract on his claim contains a valuable mineral. *Id.*; *U.S. v. Bunkowski*, 79 ID 43, 54-55 (1972). Since federal land is platted in ten-acre tracts, ten acres is a reasonable unit. "A court faced with a problem of statutory construction should give great deference to the interpretation of a statute by the... agency charged with its administration." *Brubaker v. Morton*, 500 F2d 200, 202 (9th Cir 1974).
>
> [3-5] The validity of a mining claim is established either by the granting of a patent upon application by the claimant or through contest proceedings initiated by the government. *See Ideal Basic Industries, Inc. v. Morton*, 542 F2d 1364, 1367-68 (9th Cir 1976). If the validity of the claim is contested, the claimant must prove that he has made a "discovery" of a valuable mineral deposit thereon. To do so, the claimant essentially must show that the mineral is "marketable" in that it can be mined, removed and disposed of at a profit. *Verrue v. U.S.*, 457 F2d 1202, 1203 (9th Cir 1972). Only one discovery per claim must be shown. 43 CFR §3842.1-1. However, if the character of the land is also challenged in the contest complaint, the claimant must show that each ten-acre tract contains a deposit of the mineral under the ten-acre rule. The rule does not require, as McCall argues, that a discovery be made on each ten-acre tract contrary to regulation.

Ten-Acre Rule Applies to Individual Placers

In *U.S. v. Lara*, 67 IBLA 48, 50 (1982), it was held that "the 10-acre rule is equally applicable to individual and association placer claims." Therefore the Department should examine the mineral character of every 10-acre tract, even if the claim is an individual claim consisting of only 20 acres.

Quantity of Mineral

Mineral lands do not include those vast areas of the country that contain precious metals in small quantities, but not in sufficient value to justify their exploitation. In *Davis v. Weibold*,

138 US 507, 519 (1891), it was said that the exceptions of mineral land from entry under the homestead laws or grants under the public land laws "are not held to exclude all lands in which minerals may be found, but only those where the mineral is in sufficient quantity to add to their richness and to justify expenditure for its extraction, and known to be so at the date of the grant." In *Deffenback v. Hawk*, 115 US 392, 404 (1885), quoted with approval in *Diamond Coke & Coal v. U.S., supra* at 240, the United States Supreme court also stated the following:

> We say 'land *known* at the time to be *valuable* for its minerals,' as there are vast tracts of public land in which minerals of different kinds are found, but not in such quantity as to justify expenditures in the effort to extract them. It is not to such lands that the term 'mineral' in the sense of the statute is applicable.

And in a more recent Interior Department case it was held that where land is shown to contain minerals in such limited quantities that their extraction would not justify the cost, the land is not mineral in character. *John M. DeBevoise*, A-28099, 67 ID 177 (1960).

Agriculture v. Mining Purposes

To determine whether land is agricultural or mineral in character depends on whether the land is more valuable for agricultural or mining purposes. *Barden v. Northern Pacific R. Co.*, 154 US 288 (1894). In *Davis v. Wiebbold*, 139 US 507, 521 the Court held that "... if the land is worth more for agriculture than mining, it is not mineral land, although it may contain some measure of gold or silver."

It has never been the policy of Congress to dispose of mineral lands under the agricultural or nonmineral laws. *Ivanhoe Mining Co. v. Consolidated Mining Co.*, 102 US 167 (1880). And title to known mineral land cannot be acquired under an agricultural or nonmineral entry. *Deffeback v. Hawke*, 115 US 392, 402 (1885).

Valuable for Minerals at Time of Sale

In *Davis v. Weibold, supra* at 524, it was held that "the exception of mineral lands from grant in the acts of Congress should be considered to apply only to such lands as were, at the time of the grant, known to be so valuable for their minerals as to justify expenditure for their extraction." In *Deffeback v. Hawke, supra* the Supreme Court again said the following:

> We say "land *known* at the time to be *valuable* for its minerals," as there are vast tracts of land in which minerals of different kinds are found, but not in such quantity as to justify expenditures in the effort to extract them. It is not to such lands that the term "mineral" in the sense of the statute is applicable.

No Retroactive Effect If Minerals Later Found

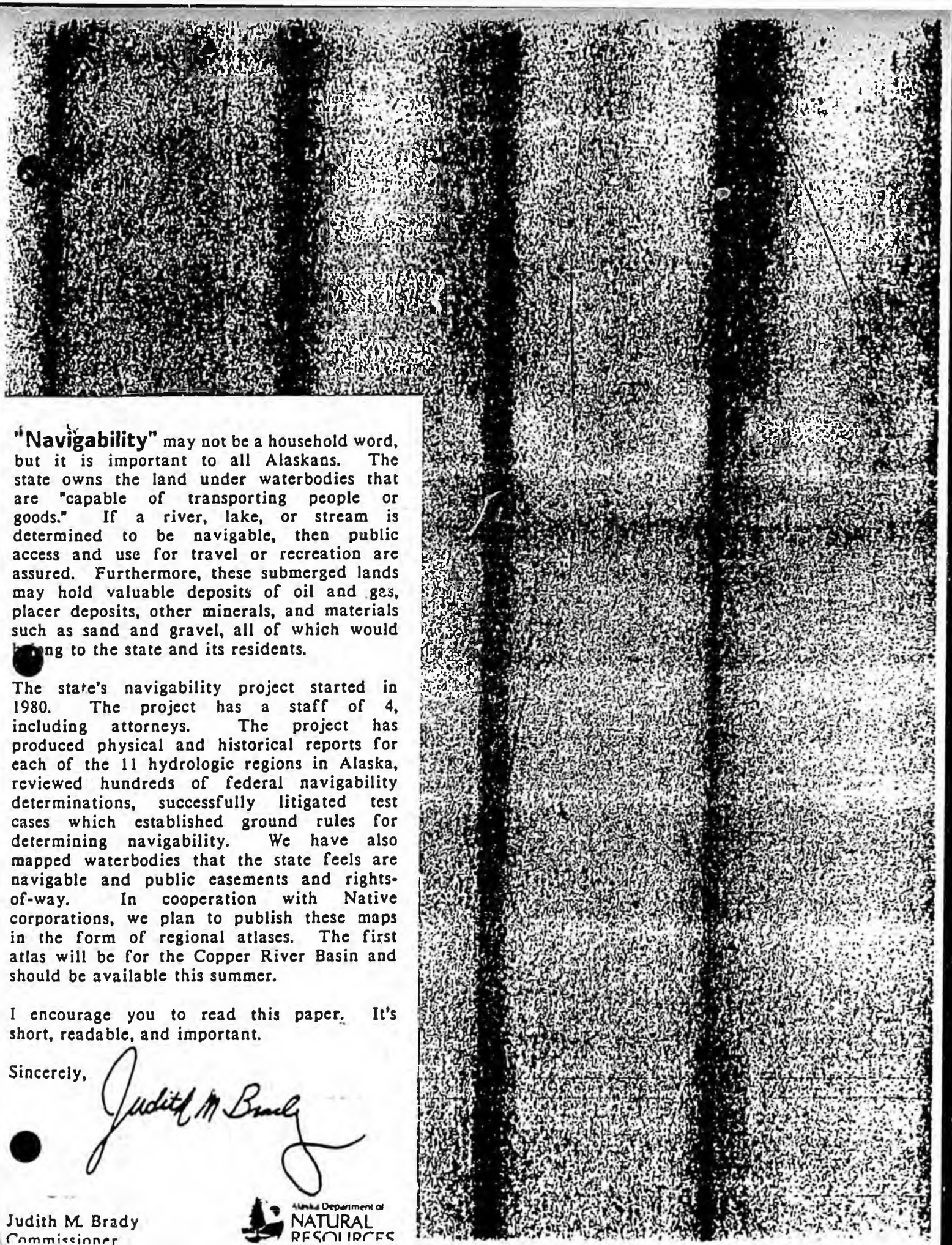
A decision by the Interior Department that lands are nonmineral in character will not be disturbed if the lands are patented and are later found to be mineral in character. *Lane v. Watts*, 1 App DC 139 (1913), *affirmed* 234 US 525. In *Deffeback v. Hawke, supra*, the Supreme Court said:

> We also say lands *known* at the time of their sale to be thus valuable, in order to avoid any possible conclusion against the validity of titles which may be issued for other kinds of land, in which years afterwards rich deposits of mineral may be discovered. It is quite possible that lands settled upon as suitable only for agricultural purposes, entered by the settler and patented by the government under the preemption laws, may be found, years after the patent has been issued, to contain valuable minerals. Indeed, this has often happened. We, therefore, use the term *known* to be valuable at the time of sale, to prevent any doubt being cast upon titles to lands afterwards found to be different in their mineral character from what was supposed when the entry of them was made and the patent issued.

Marketability Applied in Determining Mineral in Character

In *McCall v. Andrus, supra* at 1188, it was held that "mineral in character may be proved by geological inference coupled with marketability." The Court expanded on the marketability requirement as follows:

> McCall's contention that the Board based its decision on the absence of actual mining is incorrect. The Board adopted the conclusion of the hearing examiner who stated:
>
> > It is only those tracts with a deposit which can be extracted, processed, and marketed at a profit in competition with other deposits that are valuable and mineral in character. The contestees believe that the caliche material can be blasted and processed at a competitive price at the present time. (The contestees) have received a patent for 230 acres which has over three and one-half million yards of sand and gravel in every ten feet of depth. If they had a market for this amount they would have a reserve supply for one hundred years.
> >
> > The contestees offered no evidence to suggest that they had a market for any more than this amount of material either in 1948, 1953, or 1955. Without an expanded market it was not economically feasible to produce the material on the contested tracts. Consequently it had no value as a mineral prior to July 23, 1955.
>
> This is a proper application of the test for determining whether land is mineral in character.



"Navigability" may not be a household word, but it is important to all Alaskans. The state owns the land under waterbodies that are "capable of transporting people or goods." If a river, lake, or stream is determined to be navigable, then public access and use for travel or recreation are assured. Furthermore, these submerged lands may hold valuable deposits of oil and gas, placer deposits, other minerals, and materials such as sand and gravel, all of which would belong to the state and its residents.

The state's navigability project started in 1980. The project has a staff of 4, including attorneys. The project has produced physical and historical reports for each of the 11 hydrologic regions in Alaska, reviewed hundreds of federal navigability determinations, successfully litigated test cases which established ground rules for determining navigability. We have also mapped waterbodies that the state feels are navigable and public easements and rights-of-way. In cooperation with Native corporations, we plan to publish these maps in the form of regional atlases. The first atlas will be for the Copper River Basin and should be available this summer.

I encourage you to read this paper. It's short, readable, and important.

Sincerely,

Judith M Brady

Judith M. Brady
Commissioner

Alaska Department of
NATURAL
RESOURCES

Policies and Procedures On OWNERSHIP AND MANAGEMENT OF NAVIGABLE AND PUBLIC WATERS

August 1987

State ownership of the beds of navigable waters is an inherent attribute of state sovereignty protected by the United States Constitution. Montana v. United States, 450 U.S. 544 (1981). Consistent with that principle, ownership of the beds of navigable waters in Alaska vested in the newly formed State of Alaska in 1959. Under the Alaska Constitution, the state also has power and control over all waters in the state regardless of navigability. The waters are held and managed by the state in trust for the use of the people. The primary purpose of this paper is to describe the State of Alaska's policies and procedures for identifying and protecting the state's title to the beds of navigable waters. In addition, this paper outlines the legal and policy considerations which guide the management of the state's submerged lands and public waters.

IDENTIFYING AND PROTECTING STATE TITLE TO THE BEDS OF NAVIGABLE WATERS

Identification and management of the beds of navigable waters is an important policy of the State of Alaska. Unfortunately, there are differences of opinion regarding the navigability of many of Alaska's lakes, rivers, and streams. Perhaps the greatest reason for this disagreement is the lack of any hard and fast rules for determining navigability. Navigability is a question of fact, not a simple legal formula. Factual variations in waterbody use that result from different physical characteristics and transportation methods and needs must be taken into account in determining navigability. Although there are many legal precedents for determining navigability in other states, the courts are just beginning to provide the necessary legal guidance for accurate navigability determinations in Alaska.

In 1980, after passage of the federal Alaska National Interest Lands Conservation Act (ANILCA), the state established a comprehensive navigability program in response to federal land conveyances and land management activities under the Alaska Native Claims Settlement Act (ANCSA) and the Alaska Statehood Act. Navigability determinations are required to determine whether the state or the federal government owns the submerged lands. Navigability determinations are also required prior to state land disposals to insure that adequate public use easements are reserved.

The purpose of the state's program is to protect the state's sovereign ownership of the beds of navigable waters. Because state and ANCSA land selections and federal conservation units blanket the state, navigability questions have arisen for rivers, lakes and streams throughout Alaska. The navigability or nonnavigability of many of those waterbodies has been agreed upon. There are hundreds of others, however, where navigability remains at issue. The princi-

Alaska Department of Natural Resources
Division of Land & Water Management
P.O. Box 107005
Anchorage, Alaska 99510-7005

Alaska Department of NATURAL RESOURCES

pal goal of the navigability program is to identify the proper criteria for determining title navigability in Alaska and to gather sufficient information about the uses and physical characteristics of individual waterbodies so that accurate navigability determinations can be made now and in the future as disputes arise. Other important aspects of the program include monitoring federal land conveyances and management programs to identify particular navigability disputes, seeking cooperative resolution of navigability problems through negotiations and legislation, and preparing for statewide navigability litigation.

Navigability Criteria

The physical characteristics and uses of a waterbody -- or criteria -- which are used by the state for asserting navigability are based upon the legal principles established by the federal courts. Those criteria are applied taking into account Alaska's geography, economy, water-based transportation methods and the physical characteristics of Alaska's rivers, lakes, and streams. The State of Alaska bases its navigability program upon the following interpretations of the federal test of title navigability.

■ *The Waterbody Must Be Usable As A Highway For The Transportation of People or Goods.* The courts have ruled that the central theme of title navigability is that the waterbody be capable of use as a highway which people can use for transporting goods or for travel. Neither the types of goods being transported nor the purpose of the travel matter. Transportation associated with recognized commercial activities in Alaska, such as mining, timber harvesting, and trapping, is evidence of navigability. The use of a waterbody for transportation in connection with natural resources exploration or development, government land management, management of fish and game resources or scientific research is also evidence of navigability. Likewise, travel by local residents or visitors for the purpose of hunting, fishing and trapping or as a means of access to an area can be used to establish navigability. The same is true for recreational transportation, including personal travel as well as professionally guided trips.

■ *Waters Which Are Capable of Being Used For Transporting Persons and Goods, Although Not Actually Used, Are Navigable.* It is not necessary that a waterbody be actually used for transportation to be found navigable. It is enough that it is susceptible (i.e., physically capable) of being used. Whether a waterbody is susceptible of use for transportation depends upon the physical characteristics of the water course such as length, width, depth and, for a river, current and gradient. If those physical characteristics demonstrate that a waterbody could be used for the transportation of persons or goods, it is legally navigable. The susceptibility element of title navigability is very important for the identification of navigable waterbodies in Alaska. Because of sparse population and lack of development, there is often little or no evidence of actual use for transportation purposes, although many remote waterbodies are physically capable of such use.

■ *Transportation Must Be Conducted In the Customary Modes of Trade and Travel On Water.* A finding of navigability does not require use or capability of use by any particular mode of transportation, only that the mode be customary. The courts have held that customary modes of transportation include all recognized types and methods of water carriage. Unusual or freak contrivances adapted for use only on a particular stream are excluded. Customary modes of trade and travel on water in Alaska include, but are not limited to, barges, scows, tunnel boats, flat-bottomed boats, poling boats, riverboats, boats propelled by jet units, inflatable boats, and canoes. In places suitable for harvesting timber, the flotation of logs is considered a customary mode of transportation.

The mode of travel must also be primarily waterborne. Boats which may be taken for short, overland portages qualify. However, the courts have ruled that the use of a lake for takeoffs and landings by floatplanes is insufficient, in and of itself, to establish navigability.

Preliminary court decisions have indicated that the use of a river or a lake as a highway in its frozen condition, travelling on the ice, may not be evidence of naviga-

bility. If upheld, the practical significance of those rulings is unclear. It appears that most waterbodies in Alaska that are used as highways in winter can also be travelled by small boats in the summer and are navigable on the basis of the summer use.

■ *Waters Must Be Navigable In Their "Natural and Ordinary Condition".* A waterbody which can be used for transportation only because of substantial man-made improvements is not navigable for title purposes. However, if transportation does or may occur on the waterbody and the improvements would only make transportation easier or faster (e.g., dredging), it is still considered navigable for title purposes.

The presence of physical obstructions to navigation (rapids, falls, log-jams, etc.) does not render a waterway nonnavigable if the obstruction can be navigated despite the difficulties or if it can be circumvented by other means, such as portaging, lining, or poling past the obstruction. A waterbody is also navigable even though, due to seasonal fluctuations in the water level, it is not navigable at all times. However, a waterbody which is only navigable at infrequent and unpredictable periods of high water is not normally considered navigable.

■ *Title Navigability Is Determined As of The Date of Statehood.* To be considered navigable for title purposes, the waterbody must have been navigable in 1959 when Alaska became a state. This element of the navigability test focuses on the physical characteristics of the waterbody and whether those characteristics have changed significantly since statehood. Because only a short amount of time has passed since Alaska became a state, most waterbodies have not changed enough since statehood to alter their navigability. A waterbody which is navigable today was probably navigable in 1959. Exceptions might include the creation, by natural or man-made causes after statehood, of a totally new lake now used for navigation; such a lake would not be considered navigable for title purposes. Conversely, a waterbody which was navigable in 1959 but, because of natural or man-made physical changes, is no longer navigable, would still be considered navigable for title purposes.

Navigability Criteria Disputes

Because of differing legal interpretations of court navigability decisions, some aspects of the state's navigability criteria position are disputed by the federal government. The result has often been that waterbodies considered navigable by the state were determined nonnavigable by the federal government.

The primary criteria dispute has centered on the type or purpose of the transportation. For many years the federal government has asserted that a waterway must be used or capable of use for transporting commerce to be considered navigable; "noncommercial" transportation uses were considered insufficient to establish navigability. In this context, the federal government claimed that the only relevant "commercial" transportation is the distribution of goods for sale or barter, or the transportation for hire of people or things. With respect to professionally guided transportation services provided by Alaska's tourism industry, the federal government has admitted that these services constitute commerce. However, the federal government has argued that the waters are not being used as a navigable "highway" when recreation is involved, but rather more as an amusement park. The federal government therefore claimed that waters used only for commercial recreation are legally nonnavigable, even though they may be navigable in fact.

The federal government has also argued that aluminum boats, boats propelled by jet units, inflatable boats and canoes are not customary modes of travel for the purpose of determining navigability in Alaska. As a result, many waterbodies navigated by these types of watercraft have been found legally nonnavigable by the federal government. The federal government's argument is that these boats represent post-statehood technological advances, are too small to be considered "commercial", or that most "commercial" use of the watercraft developed after statehood.

Another navigability criteria dispute involves remote, isolated lakes. The federal government has found many of these lakes legally nonnavigable even though they are physically capable of being navigated. The federal government's theory is that a navigable connection to another area is required to make travel on a remote lake worthwhile. Otherwise, the federal government views the lack of development in the area around the isolated lake as an indication that the lake will never be used for commercial transportation.

To resolve these navigability criteria disputes, the state has actively pursued a limited number of court cases challenging particular findings of nonnavigability by the federal government. With the exception of floatplane use, the courts have agreed with the navigability criteria presented by the State of Alaska and have rejected the limitations suggested by the federal government. A review of these cases follows:

Gulkana River. This recent federal court decision rejected the federal government's requirement of commercial transportation and its restrictive definition of commerce. Ruling for the state, the court stated that to demonstrate navigability, it is only necessary to show that the waterbody is physically capable of "the most basic form of commercial use: the transportation of people or goods." The court also rejected the federal government's restrictive interpretation of the "customary mode of transportation" element of the title navigability test. The decision stated that the test of navigability is not limited to the types of watercraft customarily used at the time of statehood. It determined that contemporary watercraft use must be considered along with past use, and observed that on the Gulkana River, modern power boats, including jet unit craft and aluminum riverboats, "are the craft most commonly used, followed by inflatable rafts and canoes." Because the Gulkana River can be used for the transportation of people or goods using these customary craft, the Gulkana River was found navigable. That decision is now on appeal. Alaska v. United States. No. A80-358 Civil (D. Alaska Dec. 16, 1986), appeal docketed, No. 87-3555 (9th Cir. Jan 26, 1987).

Kandik and Nation Rivers. In this administrative appeal, the State of Alaska and Doyon Limited, a Native regional corporation, successfully established that the use or susceptibility of use of a river or stream by an 18 - 24 foot wooden riverboat capable of carrying at least 1,000 pounds of gear or supplies is sufficient to establish navigability. Based upon the use of these types of boats for the transportation of goods and supplies by fur trappers, as well as extensive historic and contemporary canoe use, the court found the Kandik and Nation Rivers, in Interior Alaska, navigable. Appeal of Doyon, 86 I.D. 692 (ANCAB 1979).

Alagnak River. In this federal district court case, the Alagnak River, the Nonvianuk River, Kukaklek Lake and Nonvianuk Lake were all found navigable. These interconnected waterbodies are located in the Bristol Bay region of Alaska, south of Lake Iliamna. Their primary transportation use is for commercially guided hunting, fishing, and sightseeing and for government research and management. These rivers and lakes also serve as a means of access for local residents to their homes and to the surrounding areas for subsistence hunting and fishing. After several years of litigation, the federal government conceded navigability. Alaska v. United States, No. 82-201 (D. Alaska Feb. 2, 1985).

Matanuska River. The recommended decision in this administrative appeal agreed with the State of Alaska's position that post-statehood commercial river rafting operations are sufficient to establish navigability. Based upon that type of use, the administrative law judge who heard the case has recommended that the Matanuska River, in Southcentral Alaska, be found navigable. The Secretary of Interior, over the state's objections, stayed implementation of the recommended decision. Appeal of Alaska, No. 82-1133 (IBLA rec. decision Aug. 18, 1983).

Slopbucket Lake. The state claimed that the extensive use of floatplanes on

Slopbucket Lake, a twenty acre lake adjacent to Lake Iliamna, was sufficient to establish navigability. The federal courts rejected this view. The courts reasoned that floatplanes do not use the lake as a navigable highway; they just take off and land there. Alaska v. United States, 754 F.2d 851 (9th Cir.), cert. denied, 106 S. Ct. 333 (1985).

Identification of Navigable Waters

Even if the criteria for determining navigability in Alaska were totally agreed upon, it still would be difficult to prepare a complete list of all of the navigable lakes, rivers and streams in the state. Much of Alaska has not yet been surveyed and many of out-of-date. It is an immense and complex task simply to locate and identify all of the thousands of named and unnamed lakes, rivers and streams in the state which might be considered navigable. Furthermore, once a potentially navigable lake, river or stream has been identified, detailed information about the size and uses of that waterbody is necessary to make an accurate navigability determination. Because of Alaska's undeveloped and remote character, gathering that information is both time-consuming and expensive. Finally, administrative navigability determinations made by the state or the federal government are subject to legal challenge, since only the courts can authoritatively determine title to submerged lands.

Despite these difficulties, the state and federal governments issue navigability decisions for nearly every federal land conveyance under ANCSA or the Alaska Statehood Act. The purpose of the navigability decision is to determine the extent of state-owned submerged lands within the area intended to be conveyed. Similarly, nearly every federal Conservation System Unit (CSU) management plan addresses the navigability issue. These federal navigability decisions are reviewed by the state (average 30-45 per month) to insure that the available information sources were used and interpreted correctly. Where the federal government determines nonnavigable a waterbody which is considered navigable by the state, the state provides supplemental information about the uses and characteristics of the waterbody to obtain a redetermination of navigability. In addition, the state makes its own navigability determinations if there is a need to, such as for an oil and gas lease, material sale, mining claim, or other resource use requiring an ownership determination.

In the 1960s and 1970s, the federal government generally made navigability determinations on a township by township or parcel by parcel basis in connection with individual land conveyances. This often required several looks at a single waterbody which extended across a township or parcel boundary. The result was a duplication of efforts and, occasionally, inconsistent navigability determinations. For example, there were instances in which the upper reaches of a stream were determined navigable while the lower reaches were not. In 1979, in order to achieve more uniform results, an agreement was signed between the state and the federal government to cooperate in performing navigability research on a regional hydrologic basis. Today, navigability reports are done by hydrographic region or drainage and include historic, hydrologic, and other physical characteristics information. Altogether there are 11 different hydrological regions in Alaska. Examples include the Arctic, Bristol Bay and Copper River regions.

In compiling these regional reports, the state and federal governments research published and unpublished materials concerning the past and present uses and physical characteristics of all waterbodies within the particular region. A report is then prepared that summarizes the information on the basis of individual waterbodies and by the nature of the transportation use. These reports are prepared independent of the legal disagreements on the proper criteria for determining navigability. All types of waterbody use are reported. The regional reports provide information which can be used to make navigability and other land management decisions.

In addition to preparing the regional reports containing waterbody use data, the state is graphically depicting navigable waters in Alaska on U.S.G.S. maps (1:63,360

scale). When completed, the maps will include those waters determined navigable by the state, the federal government, or by any court. The maps are based on a review of existing navigability determinations. If no formal determination has been made previously, the state may make a new determination based upon the physical characteristics of the waterbodies, the regional hydrologic reports, the transportation use information taken from the regional historical reports, and application of the state's navigability criteria. Time and resources permitting, the state may also contact individuals with specific knowledge of the mapped area and its waterbodies for additional information.

In many of the large, undeveloped regions of Alaska there may be little or no accurate waterbody use or physical characteristics information available for making these navigability determinations. When no other information is available and the state nevertheless must make a navigability determination, the state is forced to rely solely upon the physical characteristics shown on the U.S.G.S. maps. In those cases, the state identifies as navigable all streams depicted on the U.S.G.S. maps with double lines (generally at least 100 feet wide) and having an average gradient over the length of the stream of no more than 25 feet per mile. With rare exceptions, the state's experience has been that streams of this type are deep enough and wide enough to be navigable by boats carrying persons or goods and must therefore be considered legally navigable. Streams depicted with single lines, although narrower in width, may also be listed as potentially navigable if they have gradients of substantially less than 25 feet per mile and are at least 10 miles long without excessive meanderings.

With respect to lakes, if there is no public use or physical characteristics information readily available, those lakes which are shown on the U.S.G.S. maps as having a navigable water connection with other navigable waters, or which are accessible by short overland portages, are considered navigable regardless of the size of the lake. These lakes are part of a system of interconnected navigable waters. If a lake is shown on the U.S.G.S. map to be totally isolated, it will be included on the state's navigability maps if it is at least 1 1/2 miles long. That length insures that the lake can be used as a "highway" for transporting persons and goods. Future judicial decisions interpreting the "highway" requirement for isolated lakes could shorten or lengthen this 1 1/2 mile "rule of thumb."

The state recognizes that, under some circumstances, lakes smaller than 1 1/2 miles long can be and are used as navigable highways. In those cases, when known, these smaller lakes are also depicted on the state's navigability maps. Moreover, as a matter of administrative policy and convenience only, the state may sometimes make an exception to the 1 1/2 mile standard in the extremely wet regions of the state, including some areas in the Yukon-Kuskokwim Delta, Yukon Flats and on the North Slope. In these areas, an isolated lake might need to be 2-3 miles long to be included on the state's navigability maps. Although smaller lakes in these areas are capable of being used for transportation and should be found navigable by the courts, the presence of so much water in these areas suggests that the numerous larger lakes may provide adequate water-based public transportation routes at this time. Therefore, the state has decided to concentrate its limited resources in protecting these larger waterbodies first.

Riparian Rights and Statute of Limitations

Disputes over ownership of submerged lands in Alaska arise under a variety of circumstances. However, the most common in Alaska is the product of the survey and acreage accounting system used by the federal government for conveying land to the state and ANCSA corporations.

Accurate determinations of the amount of land selected by and conveyed to the State of Alaska or Alaska Native Corporations require that the selected areas be surveyed; acreage figures used prior to survey are simply estimates. Under traditional land survey and conveyance procedures, only uplands are surveyed and conveyed, not submerged lands. Bodies of water are

excluded from the surveys and the water acreage is not included in computing the amount of land involved in the conveyance. In Alaska, however, the federal government has not consistently followed these survey rules. Instead, the federal government has often treated bodies of water like uplands, surveying and charging submerged lands against the total acreage entitlements. Since the state owns the beds of navigable waters, the federal government issued navigability decisions for many bodies of water within selected areas. If a waterbody was believed to be nonnavigable, however, the submerged lands were conveyed and the acreage was charged against the state or ANCSA corporations' acreage entitlement.

Because of these conveyance procedures, the navigability of waterbodies in Alaska have been issues of contention since the enactment of the Alaska Statehood Act and ANCSA. In addition to the problems caused by a lack of information about many waterbodies, the situation was aggravated by the narrow definition of navigability used by the federal government. These narrow definitions have been rejected by the courts, including the recent decision in the Gulkana River case. Alaska v. United States, No. A80-359 Civil (D. Alaska Dec. 16, 1986). Thus, many of the submerged lands that the federal government attempted to convey to Native corporations should have been recognized as belonging to the state. The state appealed many conveyances to protect its title. Native corporations also found it necessary to challenge erroneous federal navigability decisions to insure they would not be deprived of any portion of their entitlements by being charged for submerged land owned by the state.

In an effort to resolve these inequities, the state, United States Department of Interior and the Alaska Federation of Natives agreed that the standard rules of survey, as found in the 1973 edition of the Manual of Instructions for the Survey of the Public Lands of the United States, should be followed for land conveyances in Alaska. The standard rules of survey require that navigable lakes, rivers, and streams regardless of size, and all lakes 50 acres or larger and rivers and streams three chains (198) feet in width or wider, regardless of navigability, must be meandered and segregated or excluded from the public lands. The recipients of conveyances from the federal government are charged only for the amount of public land, or uplands, identified by the survey. These procedures have been consistently followed in Alaska since 1983.

The use of these survey procedures has eliminated many of the problems associated with land conveyances in Alaska. Submerged lands are no longer being conveyed to fulfill acreage entitlements. Thus, with the exception of lakes smaller than 50 acres and streams narrower than 198 feet, navigability determinations are not required prior to land conveyances. Determinations of ownership of submerged lands, where this survey procedure is used, can be put off until a natural resource use requires resolution, such as an oil and gas lease or a gravel sale.

The decision to use the standard survey procedures for land conveyances in Alaska has been challenged by two environmental groups in the court case of The Wilderness Society v. Carruthers, No. 84-1823 Civil (D.D.C., June 30, 1986), appeal docketed, No. 86-5205 (D.C. Cir. Feb. 28, 1986). Their lawsuit was dismissed by the federal district court in Washington, D.C. for lack of standing, since the environmental organizations could not demonstrate that they were personally affected or injured by the use of these standard survey procedures. The State of Alaska is actively defending the case, along with the federal government, the Alaska Federation of Natives, and several ANCSA corporations.

Even if the state and ANCSA corporations win that lawsuit, however, a major problem concerning navigability decisions made by the federal government under the old system remains unresolved. At issue are hundreds of erroneous nonnavigability decisions and the resulting submerged land conveyances made to Alaska Native Corporations in previous years. Those nonnavigability decisions and submerged land conveyances are subject to the statute of limitations in Section 901 of ANILCA, which requires

the state to file federal court litigation challenging every erroneous non-navigability finding or risk losing state title to the submerged lands.

Section 901 of ANILCA was an attempt to guarantee that ANCSA corporations would not lose a portion of their land entitlement under ANCSA as a result of judicial rulings of navigability. Specifically, that section provides that the ownership by a ANCSA corporation of a parcel of submerged land, or a decision by the Secretary of Interior that the water covering such a parcel is not navigable, shall not be subject to a judicial determination unless a civil action is filed in the United States District Court within five years after the date of the execution of the involved conveyance, if the conveyance was made after December 2, 1980. A seven year statute of limitations from date of the conveyance would apply if the conveyance occurred before December 2, 1980.

These original five and seven year periods have been twice extended by Congress to avoid the necessity for extensive navigability litigation while Congress searches for a better and more permanent solution to the submerged lands problems in Alaska. The statute of limitations periods now expire eight and nine years from December 2, 1980 respectively. However, it is inevitable that, if there is a limitation on the time within which the state must assert its title, the state will eventually be required to file a large number of navigability cases each year to preserve its claim of title to submerged lands.

This artificially induced litigation would be costly and time consuming, not just for the state but also for the federal government and ANCSA corporations. The judicial system would also be inundated by litigation that would often be unnecessary but for the statute of limitations. Moreover, extensive navigability litigation taking many years to resolve would perpetuate the conflicts and uncertainties regarding acreage chargeability and ownership of submerged lands in Alaska.

Under the survey procedures now being used in Alaska, submerged lands are no longer being conveyed and charged against the state and ANCSA corporations acreage entitlements. Thus, the Section 901 statute of limitations is no longer necessary to insure that ANCSA corporations do not lose a portion of their entitlement because of navigability findings. Recognizing this, the state, the Alaska Federation of Natives and the Department of the Interior are working together in Washington, D.C. to legislatively repeal the Section 901 statute of limitations and to confirm the 1983 decision to use the standard survey procedures for acreage accounting purposes under the Alaska Statehood Act and ANCSA.

If Section 901 is not repealed, the magnitude of the task of identifying all the parcels of submerged land that might be subject to the limitations period in sufficient time to bring an action under Section 901 would put an immense burden on the state. There is also continuing uncertainty concerning the criteria for determining naviga- bility in Alaska. In addition, much of the land being conveyed by the federal government in Alaska has yet to be surveyed. Prior to survey, many land transfers have been accomplished by interim conveyances or tentative approvals which may be inaccurate because of poorly prepared or outdated maps, aerial photography, or lack of mapping.

For these reasons, the State of Alaska filed suit in November 1981, challenging the constitutionality of Section 901(a) on equal footing and due process grounds. Alaska v. United States, No. A81-483 (D. Alaska filed Nov. 25, 1981). The case was stayed at the request of all of the parties in the spring of 1983 so that alternative remedies could be pursued in Congress. There has been no further activity on the case since that time, although it will be renewed if the legislative effort to repeal Section 901 is unsuccessful.

Navigable Waters Within Pre-Statehood Federal Withdrawals

Although disputes over which waters in Alaska are navigable are the most frequent cause of submerged land ownership disputes, there is another major legal issue which

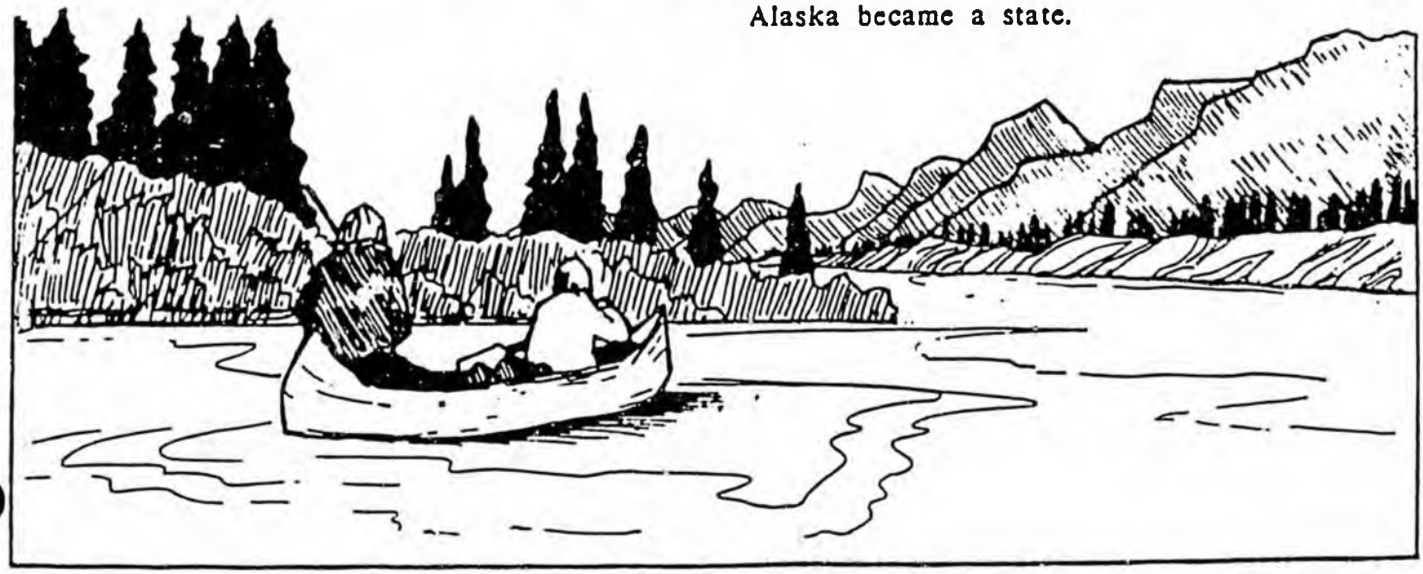
also threatens Alaska's sovereign claim to the beds of navigable waters. Even where navigability is conceded, the federal government often contends that title to submerged lands did not vest in the state if the submerged lands were withdrawn or reserved by the federal government on the date of statehood. The federal government has used this argument to attempt to convey the beds of navigable waters within prestatehood withdrawals or reservations to third parties. Within state selections, the federal government has often attempted to charge the acreage of "reserved" submerged lands against the state's entitlement.

The state strongly disagreed with this federal claim and actively pursued a number of court challenges to resolve the issue. In addition to numerous appeals from federal decisions to convey or charge for the beds of navigable waters, the state was involved as a friend of the court in one case and continues to be involved in another United States Supreme Court case which present this issue. The case pending is United States v. Alaska, U.S. Supreme Court 84 Original (filed June, 1979).

On June 8, 1987 the Court issued its decision in Utah v. United States, No. 85-1772 (filed Oct. 14, 1986). In this case the federal government, in 1976, issued oil and gas leases for land underlying Utah Lake, a navigable waterbody located in Utah. The suit sought a declaratory judgement that Utah, rather than the United States, had title to the lake bed under the "equal footing doctrine". Under that doctrine, the United States holds the land under navigable waters in the territories in trust for future states, and, absent a prior conveyance by the federal government to third parties, a state acquires title to such land upon entering the Union on an "equal footing" with the original 13 states.

The Supreme Court held that title did pass to the state upon Utah's admission to the Union. They held that there is a strong presumption against finding congressional intent to defeat a state's title, and, in light of the longstanding policy of the federal government's holding land under navigable waters for the ultimate benefit of future state absent exceptional circumstances, an intent to defeat a state's equal footing entitlement could not be inferred from the mere act of the reservation itself. The United States would not merely be required to establish that Congress clearly intended to include land under navigable waters within the federal reservation, but would additionally have to establish that Congress affirmatively intended to defeat the future state's title to such land.

This decision has significant ramifications within Alaska, since over 95 million acres - more than 25% of the total area of the state - was enclosed within various federal withdrawal and reservations at the time Alaska became a state.



Public Trust Doctrine

The state has special duties and management constraints with respect to state owned land underlying navigable waters. These special duties and management constraints arise from the Alaska Constitution. The Alaska Constitution contains numerous provisions embracing the principles commonly known as the public trust doctrine. That doctrine, as it has evolved in court decisions over hundreds of years, requires the state to exercise authority to insure that the paramount rights of the public to use navigable waters for navigation, commerce, recreation and related purposes is not substantially impaired.

Illinois Central Railroad Company v. Illinois, 146 U.S. 387, 452 (1892), involved a grant by the State of Illinois of one thousand acres of the bed of Lake Michigan, constituting the entire harbor of the City of Chicago, to the Illinois Central Railroad. The U.S. Supreme Court held that the grant was revokable, that the state held the land in trust for the public, and that it was powerless to relinquish its rights as trustee.

The court went on to say that land underlying navigable waters is much more than a simple property right.

> [I]t is a title different in character from that which the state holds in lands intended for sale. It is different from the title which the United States holds in the public lands which are open to preemption and sale. It is a title held in trust for the people of the state that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties. . . . The trust devolving upon the state for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of the property.

Courts in other states over the years have defined in somewhat different ways the public uses that are permitted and protected by the public trust as it applies to submerged lands. In reviewing these other cases, it can clearly be seen that through time an ever expanding definition of the public uses protected by the public trust doctrine is being adopted. The California Supreme Court recently held that:

> Although early cases had expressed the scope of the public's right in (lands subject to the public trust) as encompassing navigation, commerce and fishing, the permissible range of public uses is far broader, including the right to hunt, bathe or swim, and the right to preserve the (public trust) lands in their natural state as ecological units for scientific study. City of Berkeley v. Superior Court of Alameda, 606 P. 2d 362, 365 (Cal. 1980).

The Alaska Supreme Court has never had occasion to directly address the application of the common law public trust doctrine in Alaska. However, several provisions in Art. VIII of the Alaska Constitution provide similar protections - protections which cannot be disregarded by the legislature or overruled by the courts. For example, Art. VIII, Sec. 3 provides: "Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

The 1985 Alaska legislature recognized the constitutional application of public trust doctrine principles in Alaska. In an Act

relating to the public or navigable waters of the state, the legislature found that "the people of the state have a constitutional right to free access to the navigable or public waters of the state" and that the state "holds and controls all navigable or public waters in trust for the use of the people of the state". 85 SLA Ch. 82. In the same act, the legislature ruled that submerged lands are "subject to the rights of the people of the state to use and have access to the waters for recreational purposes or any other public purposes for which the water is or capable of being used consistent with the public trust."

It is clear under the Alaska Constitution that the State of Alaska has the responsibilities of a trustee with respect to management of land underlying navigable waters. Moreover, the Alaska legislature has adopted a broad view of the public uses protected or permitted by the public trust. Accordingly, the Alaska Attorney General's Office has determined that, until the Alaska Supreme Court rules on the question, the state should assume that a broad definition of public rights protected by the Alaska Constitution and the public trust doctrine applies in Alaska, similar to the one adopted by the California Supreme Court. 1982 Atty. Gen. Op. No. 3 (June 10, 1982).

Navigable Waters Within ANILCA Conservation System Units

On December 2, 1980, the Alaska National Interest Lands Conservation Act became law. This Act created or added 104.3 million acres to various federal conservation system units. Because these "withdrawals" occurred after the date of statehood, there is no disagreement between the state and federal governments that navigable waters within the various CSU's are owned by the state. However, there is some disagreement on the amount of authority the federal land managers may have to regulate these state owned submerged lands.

The U.S. Constitution gives Congress certain limited powers to control uses on state owned submerged land. These are known as the Property Clause, Navigational Servitude and the Commerce Clause. The extent of these powers involves complex legal questions. However, even assuming that Congress has the power to regulate state-owned submerged lands in Alaska, the United States Supreme Court has ruled that Congress may choose not to exercise that power, thus leaving regulation totally up to the state. Escanaba Co. v. Chicago, 107 U.S. (17 Otto.) 678 (1883). Whether Congress has done that can only be determined by examining the federal laws passed by Congress dealing with Alaska lands. Another possibility is that the state and federal governments have concurrent jurisdiction, sharing the authority to regulate submerged lands.

In ANILCA, Congress did not take away the state's power to regulate stateowned submerged lands within federal CSU's in Alaska. Numerous provisions in ANILCA recognize and respect the state's authority over state-owned land. In some cases, however, Congress may have attempted to give the federal land managers some concurrent authority to regulate navigable waters within CSU's. The state has taken the position that, where possible, cooperation rather than confrontation will be used with the federal land managers. This cooperation usually takes the form of a memorandum of understanding that discusses management issues and how they will be resolved.

Public Waters

It is not only the beds of navigable waters in Alaska that are reserved in public ownership for public use. Under Article VIII, section 3 of the Alaska Constitution, all waters occurring in their natural state are reserved to the people for common use. Article VIII, section 14 of the Alaska Constitution also provides for the broadest possible access to and use of state waters by the general public.

> Section 14. *Access to Navigable Waters.* Free access to the navigable or public waters of the state, as defined by the legislature, shall not be denied any citizen of the United States or resident of the state, except that the legislature may by

general law regulate and limit such access for other beneficial uses or public purposes.

Pursuant to this grant of authority, the Alaska State Legislature, in AS 38.05.365(12), defined "navigable waters" as follows:

> "navigable waters" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes.

This definition of navigable waters does not define state ownership of submerged land in Alaska. The definition of navigability for ownership purposes was discussed earlier in this paper. This definition, however, does define what types of waterbodies in Alaska are available for public use under the Alaska Constitution and fall under various protection clauses found in the Alaska statutes.

The Alaska State Legislature has broadly construed the constitutional protections for public use of the waters of the state. In an Act (85 SLA chap. 82, codified as AS 38.05.128) relating to the navigable or public waters of the state, the state legislature found:

> (a) The people of the state have a constitutional right to free access to the navigable or public waters of the state.
>
> (b) Subject to the federal navigational servitude, the state has full power and control of all of the navigable or public waters of the state both meandered and unmeandered, and it holds and controls all navigable or public waters in trust for the use of the people of the state.
>
> (c) Ownership of land bordering navigable or public waters does not grant an exclusive right to the use of the water and any rights of title to the land below the ordinary high water mark are subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purposes for which the water is used or capable of being used consistent with the public trust.
>
> (d) This Act may not be construed to affect or abridge valid existing rights or create any right or privilege to the public to cross or enter private land.

Thus, under the Alaska Constitution and this statute, any surface waters capable of use for the public purposes defined in AS 38.05.365(12) are available to the public, irrespective of streambed ownership. Further, such public use is not considered a taking and is not subject to inverse condemnation action. Private ownership is subject to the public rights that are protected by the public trust. In two recent Montana Supreme Court cases involving the nature of public rights where the submerged lands are privately owned, the court ruled that the public has the right to use the area between the high water marks for floating, wading, fishing, portaging, anchoring, and other uses incidental to the use of the water. The court also found that if travel on the water or streambed is obstructed, the public is allowed to use the adjacent private land to portage around the barrier in the least intrusive way possible, avoiding damage to the private property holder's rights. However, the public does not have the right to enter into or trespass across private property in order to enjoy the recreational use of state owned

waters. The State of Alaska agrees with this ruling and believes a similar ruling would be made by our state courts.

Boundaries of Navigable Waters

The state is often asked where the public portion of a navigable lake or stream ends and private ownership rights begin. The boundary between public and private ownership is the ordinary high water mark. According to the Alaska Supreme Court, the ordinary high water mark is a natural physical characteristic placed upon the lands by the action of the water. It is not a highly technical boundary requiring a surveyor to locate. It has been defined as the mark along the bank or shore where the presence and action of water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore. That line may be indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics. See State, Department of Nat. Resources v. Pankratz, 538 P.2d 984, 988-89 (Alaska 1975).

The same question often arises in the case of wide, braided streams. A braided stream is simply a river with numerous channels that are constantly changing. See Oklahoma v. Texas, 260 U.S. 606, 634-36 (1923). Thus, the test for determining the boundary is the same. Is the area so regularly covered with water as to deprive it of terrestrial vegetation? If so, it is considered part of the bed of the stream and is subject to the public rights of use. On the other hand, if upland vegetation has taken hold, the area should be considered part of the adjacent uplands or, if isolated, an island. Islands are not part of the riverbed and, if privately owned, are not subject to the same public rights. However, newly formed islands belong to the owner of the river bed. Thus, islands which have risen since the date of statehood from the beds of state-owned navigable rivers belong to the state and may be used by the public. If the river is nonnavigable and the bed is privately owned, a newly formed island belongs to the private owner.

Conclusion

This paper enunciates the state's policies and procedures for managing and protecting state submerged lands and public waters. As further legal and practical developments occur in this area, these policies and procedures will be reexamined by the state and, if necessary, appropriate changes will be made.

Alaska State Legislature

Please enter into the record my testimony to the House Resources committee name

committee on HB 99 bill/subject . dated 1/26/89 .

TO: HOUSE RESOURCE COMMITTEE FOR 1/26/89 HEARING ON H.B.99

REFERENCE MADE TO "IMPLEMENTATION OF 6(1) COURT DECISION," PAGES 3-4, 1989 ALASKA MINERALS COMMISSION REPORT. IMPORTANT IS "SETTING OF RENTAL AND/OR ROYALTY FEES FOR MINING CLAIMS ON SUBJECT STATE LANDS SHOULD NEITHER PENALIZE CLAIMANTS NOR CREATE DISINCENTIVES FOR INDIVIDUALS OR COMPANIES DOING MINERAL EXPLORATION," THANKS FOR CONSIDERATION.

EARL H. BEISTLINE
ALASKA MINERALS COMMISSION

Signed: Earl H Beistline
Testifier

Representing (Optional)

P.O. Box 80148, Fbx AK 99708
Address

479-6240
Phone No.

ALASKA MINERALS COMMISSION
Earl H. Beistline, Chairman
P. O. Box 80148
Fairbanks, AK 99708

January 19, 1989

The Honorable Curt Menard
House of Representatives
P. O. Box V, CT-606
Juneau, AK 99811

Dear Mr. Menard:

Please find a copy of the 1989 report of the Alaska Minerals Commission enclosed. This is the third report submitted by the Commission since its creation in 1986. As a result of legislation passed and signed into law last year, the Commission will continue to submit annual reports through 1994.

During 1988, the legislature and the administration took several positive steps to address regulatory and policy issues of importance to the industry. An Alaska Mineral Policy Act encouraging the development of the state's abundant mineral resources was passed by the legislature and signed into law by Governor Steve Cowper on June 8, 1988. The Department of Environmental Conservation promulgated new mixing zone regulations for water discharges that are to be implemented during the 1989 season, and has begun work on new regulations for start-up variances.

These positive developments, both in industry and government, have come at an opportune time. The international market forces which have brought new investment in Alaska's minerals and the willingness of the legislature and administration to address legitimate concerns of the industry have helped to promote economic growth and diversification at a time when the state must begin to overcome its economic dependency on oil field development and oil production revenues.

Additional issues will challenge the continued growth of Alaska's mining industry in 1989 and beyond. Of primary concern is the legislative implementation of the Alaska Supreme Court's decision on a lawsuit regarding the interpretation of section 6(i) of the Alaska Statehood Act. The Commission's recommendations on this and other issues are addressed in the attached 1989 report.

Please do not hesitate to contact myself or other members of the Minerals Commission if you would like to discuss the recommendations of this report or other issues concerning Alaska's mining industry.

Sincerely,

Earl H. Beistline
Chairman
Alaska Minerals Commission

EHB:nm
Enclosure

Report of the

ALASKA MINERALS COMMISSION

to

Governor Steve Cowper

and the

Alaska Legislature

January 1989

Report of the

ALASKA MINERALS COMMISSION

January 1989

CONTENTS

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

Report of the

ALASKA MINERALS COMMISSION

to

Governor Steve Cowper

and the

Alaska Legislature

January 1989

FOREWORD

The Alaska Minerals Commission was created by the 14th Legislature and signed into law on June 6, 1986, through the enactment of Chapter 98 of the 1986 Session Laws of Alaska.

The enabling legislation instructs the Commission to make recommendations to the Governor and Legislature on ways to mitigate the constraints, including governmental constraints, on the development of minerals, including coal, in the state. The Commission's Statement of Purpose can be found in Appendix A.

The Commission presented its inital report to the Governor and the Legislature in January 1987, presented its interim report in January 1988, and was charged with making a final report to the first session of the 16th Legislature in January 1989 after which the Commission was to expire. However, during the second session of the 15th Legislature, House Bill 561 was enacted. The bill amended the enabling legislation by extending the Commission's charter through January 1994 and by providing that one member reside in a rural community (Appendix B).

Commission members are appointed by the Governor, the President of the Senate and the Speaker of the House. The current members include representatives of the placer, hard rock and coal mining industries and come from diverse areas of the state. Administrative and staff support to the Commission is provided by the Division of Business Development, Department of Commerce and Economic Development.

I would like to thank all members of the Commission, staff and those members of the public who have provided their comments and worked on committees for their contributions in preparing this report. I would also like to thank Governor Cowper and the Alaska Legislature for the support they have provided the Commission.

Earl H. Beistline
Chairman

Report of the

ALASKA MINERALS COMMISSION

January 1989

CONTENTS

ALASKA MINERALS COMMISSION

Chairman

Earl Beistline
Mining Consultant
Fairbanks, Alaska

Vice Chairman
Joseph E. Usibelli, Chairman
Usibelli Coal Mine, Inc.
Healy, Alaska

Del Ackels, Owner-Operator
Goldust Mines
Fairbanks, Alaska

Irene Anderson, Land Planner
Sitnasuak Native Corporation
Nome, Alaska
(Appointed September 1988)

G.G. (Jerry) Booth
Manager, Alaska Exploration
Cominco Alaska Exploration, Inc.
Anchorage, Alaska

Roger Burggraf, Owner
Grant Mine
Fairbanks, Alaska

Tom Crafford, Mine Geologist
Greens Creek Mining Company
Juneau, Alaska
(Appointed December 1988)

Don Finney, Ketchikan Manager
U.S. Borax and Chemical Corp.
Ketchikan, Alaska

Karl Hanneman, President
Alaska Placer Development, Inc.
Fairbanks, Alaska

Jenny Hawley, Vice President
Hawley Resource Group, Inc.
Anchorage, Alaska
(Resigned, December, 1988)

Ron C. Sheardown, President
Greatland Exploration, Ltd.
Anchorage, Alaska
(Appointed, May 1988)

Ernest N. Wolff
Mining Consultant
Fairbanks, Alaska

Staff

Charlie Green
Division of Business Development
Department of Commerce and
Economic Development
1001 Noble Street, Suite 360
Fairbanks, Alaska 99701

Jim Deagen
Division of Business Development
Department of Commerce and
Economic Development
P.O. Box D
Juneau, Alaska 99811

INTRODUCTION

In its initial report to the Governor and Legislature in January 1987, the Alaska Minerals Commission presented findings and recommendations addressing the range of fundamental issues critical to Alaska's mineral industry. The Commission would like to refer interested readers to that report and would like to express continued support for the comprehensive recommendations made in it. In this report, as in the January 1988 report, the Commission has chosen to focus and to present recommendations on those issues of the most timely importance.

In 1988, a rebound in the production of gold and in expenditures made on Alaska exploration programs highlighted renewed interest in Alaska's precious metals. Additionally, Alaska continued its unique exports of subbituminous coal to Pacific Rim countries. In 1989, the Greens Creek mine and the Red Dog mine are scheduled to begin production, establishing the state as an international supplier of silver, zinc and lead.

During 1988, the Legislature and the administration took several positive steps to address regulatory and policy issues of importance to the industry. An Alaska Mineral Policy Act encouraging the development of the state's abundant mineral resources was passed by the Legislature and signed into law by Governor Steve Cowper on June 8, 1988. The Department of Environmental Conservation promulgated new mixing zone regulations for water discharges that are to be implemented during the 1989 season and has begun work on new regulations for start-up variances.

These positive developments, both in industry and government, have come at an opportune time. The international market forces which have brought new investment in Alaska's minerals and the willingness of the Legislature and administration to address legitimate concerns of the industry have helped to promote economic growth and diversification at a time when the state must begin to overcome its economic dependency on oil field development and oil production revenues.

Additional issues will challenge the continued growth of Alaska's mining industry in 1989 and beyond. Of primary concern is the legislative implementation of the Alaska Supreme Court's decision on a lawsuit regarding the interpretation of section 6(i) of the Alaska Statehood Act. Certain state laws governing the location of mining claims must be amended during the 1989 legislative session to reflect the court's directives.

A workable and reasonable legislative implementation of the Court's 6(i) decision has been identified as the highest priority of the Alaska Minerals Commission's subcommittees for hard rock mining, placer mining, coal mining and industrial minerals. The Commission's recommendations for the implementation of the 6(i) decision are found under the Legislative Priorities section of the report.

Additional recommendations in the legislative priorities section, as well as those under other section headings, represent other actions that the Commission feels will demonstrate the state's desire to expand its mineral industry and to provide a reasonable regulatory and tax climate for business. These actions will do much to attract exploration and development in the short-term, and in turn, will provide widespread economic benefits for the state and its residents over the long-term.

RECOMMENDATIONS OF THE ALASKA MINERALS COMMISSION

I. LEGISLATIVE PRIORITIES

Implementation of the 6(i) Court Decision

- The highest priority of the Alaska Minerals Commission is the fair and equitable implementation of the Alaska Supreme Court's interpretation of section 6(i) of the Alaska Statehood Act. (For a summary of the 6(i) issues and lawsuit, see Appendix C.)

  The Commission supports the positions of both the Alaska Miners Association[1] and Governor Steve Cowper[2] on the following three critical aspects of any legislation to be enacted.

  1. The traditional discovery, location and recordation system recognizes the unique nature of mineral resource development as well as the needs of individuals and companies carrying out mineral exploration and development. The right of self-initiation is guaranteed by the Alaska Constitution and no fundamental changes should be made in the way preferential minerals rights are initiated on state land.

  2. Because of the long lead time commonly required between the discovery of a deposit and its initial production, there should be no arbitrary time limits placed upon the tenure of a mining claimant on state lands. This is especially important in Alaska where the need to construct basic infrastructure and to await financial and market "windows" will often result in longer development lead times than in more developed states and countries.

  3. The setting of rental and/or royalty fees for mining claims on subject state lands should neither penalize claimants nor create disincentives for individuals or companies doing mineral exploration. In Alaska, exploration, development, capital and operating costs are commonly higher than in more developed states and countries. Alaska's cumulative mineral tax schedule, including existing corporate income taxes, mining license taxes and new rental and/or royalty fees should not unduly burden the small miner nor increase total development costs to the point where diminished economic feasibility precludes mine development or mineral exploration on subject state lands.

  A fourth aspect of the implementation of the 6(i) court decision is the definition of lands to which the new legislative provisions will apply. The Commission agrees with Governor Cowper that it is in the interests of both the state and the mining industry that this aspect be resolved in a manner that minimizes the risk of lengthy and expensive litigation. As the Alaska Supreme Court ruled that the 6(i) provisions are applicable only to those state lands "known to be mineral in character at the time of state selection," the Commission also recommends that a clear definition of such lands be developed, and that workable and expeditious procedures be developed to allow timely classification of lands and claims subject to 6(i).

  Finally, the Commission strongly recommends that proposed legislation implementing the 6(i) court decision be limited to only those issues specifically required by the court.

---

[1] *Communication from Richard A. Hughes, President, Alaska Miners Association to Governor Steve Cowper, September 9, 1988.*

[2] *Communication from Governor Steve Cowper to Richard A. Hughes, President, Alaska Miners Association, October 19, 1988.*

Allowance for Flexible Work Weeks

- The passage of legislation allowing work schedules to be set on the basis of project specific considerations will allow for more efficient use of labor and provide more desirable time-off patterns for employees. This will be particularly significant for mines in remote locations with employees who reside in communities distant from the work site.

Extension of Underground Work Hours

- Legislation is required to amend current statutes limiting shifts at the work face of underground mines from the current maximum of eight hours to a maximum of ten hours. The antiquated statute presently in effect does not recognize the implementation of modern safety programs and penalizes mine efficiency and employee time-off schedules on remote mining projects.

Multiple Use of State Lands

- The Commission would like to reemphasize four recommendations made in the Commission's 1987 report regarding the management of state lands.

  1. Alaska Statute 38.05.300 should be amended as follows:

     Classification of lands. (a) The commissioner shall, where considered necessary and proper, classify land for surface use. This section does not prevent reclassification of land, where the public interest warrants reclassification, nor does it preclude multiple use of land whenever different uses are compatible. State land, water, or land and water area may not, except by act of the state legislature, be closed to multiple use or to mineral entry if the area involved contains more than 640 acres.

  2. The Legislature should redefine, to conform with constitutional intent, the various definitions of "multiple use" in the Alaska Statutes to require the management of state lands for the use of all resources rather than allocating or selectively denying resource use.

  3. The Legislature should only make closures of land to mineral entry where documented and demonstrated incompatible use is proven and only when preceded by a mineral assessment.

  4. The Legislature and Governor should periodically review lands closed to mineral entry to assess the need for continued closure and, if there is no longer a compelling need for closure, return the land to multiple-use designation.

Amending the Reporting Requirements of the Minerals Policy Act.

- Sec. 44.99.110(2) should be amended to require each department, board, commission, or agency, including the University of Alaska, to fulfill its reporting requirements as set out in this section on an annual basis through 1994 rather than once only in 1989.

Industrial Minerals Inventory

- The Legislature should reintroduce and enact legislation similar to SB 71 (or companion legislation HB 69), Senate Concurrent Resolution 4 and House Concurrent Resolution 5 as introduced during the Second Session of the 15th Legislature. These bills and resolutions address the need for systematic identification, inventory and reserve of sand and gravel resources to meet the present and future needs of transportation systems, populated areas and large-scale developments within the state and Pacific Rim.

II. ADMINISTRATIVE PRIORITIES

Public Information on Water Quality Progress

- Increased public awareness of the progress being made on improving water quality will assist in providing support for the administrative actions needed to provide for greater flexibility in the state's water quality regulations. To follow up on his March 1987 placer mining directive[3], the Governor should instruct his agencies to make a special effort to inform other water user groups and the general public on the progress that has been made by miners on improving water quality.

Improve Flexibility of Water Quality Regulations

- The Department of Environmental Conservation should aggressively pursue implementation of the six areas identified by the Water Quality Task Force as having the potential to increase regulatory flexibility while complying with the Clean Water Act and protecting downstream users. These include the use of mixing zones and start-up variences, the reclassification of drainages, the restructuring of water uses, the revision of water quality criteria and the assumption of the NPDES program.

  For there to be significant progress toward the objective of having flexible water quality management, the rate of progress on these issues should be accelerated to the point where each tool can be used appropriately and collectively to solve the problem. The recently completed Tolovana reclassification study is of minimal practical value and is an example of the time and expense that will be wasted unless these various tools are used in a concerted approach to a solution. Similarly, until a water quality criteria review is conducted and the 5 NTU drinking water standard is changed to 25 NTU, the new mixing zone regulations may not provide meaningful relief as the existing standards may still be unattainable. These tools must be used collectively to reach a solution and to date this is not being done.

  The new mixing zone regulations that became effective September 15, 1988 must be implemented to achieve the objectives outlined in the Governor's March 1987 directive: maximize flexibility under the law while protecting downstream users. The Department of Environmental Conservation is currently making progress toward this end, and the Governor should direct the Alaska Department of Fish and Game, Habitat Division to contribute workable solutions to the implementation of mixing zones.

Reclassification of Drainages

- The Tolovana reclassification study did not seek to utilize the maximum flexibility available. For example, sampling on the Tolovana River and Livengood Creek both showed that existing natural bacterial contamination justified eliminating the 5 NTU drinking water turbidity standard. However, instead of using this data to appropriately and legally justify relief from the most stringent turbidity standards, the Department of Environmental Conservation chose to discount the data. In the future, the department must undertake reclassification studies with the objective of using all valid regulatory means to grant relief when conditions justify reclassification and downstream users remain protected. To date this is not being done.

---

[3] *Memorandum from Governor Steve Cowper to Department Commissioners Judith Brady, Don Collinsworth and Dennis Kelso, March 30, 1987.*

Offshore Dredging

- The following three recommendations have the objectives of stimulating new offshore mining activity and resolving current regulatory issues concerning the analysis and permitting of offshore mining operations.

  1. The Governor should direct the Division of Mining to work closely with industry to develop workable offshore applications and leasing procedures in state waters, and to begin processing offshore applications and leases under those procedures.

  2. The Governor should encourage the Environmental Protection Agency and the Army Corps of Engineers to develop a Memorandum of Understanding that would classify material discharged from offshore dredges as dredged material regulated under Section 404 of the Clean Water Act, rather than as industrial waste under Section 402 as currently classified.

  3. The Office of the Governor should ensure that future coordinating groups, such as the Norton Sound Federal/State Task Force, be organized so as to provide greater accountability by the sponsoring agency to the participating groups. Some participants in the Norton Sound task force have been critical of the failure of the sponsoring agency to specifically respond to comments made by reviewing groups.

Resource Development in National Petroleum Reserve Alaska

- The Governor should urge the opening of the federal National Petroleum Reserve Alaska to coal and mineral development.

Transportation and Infrastructure

- The lack of an established transportation system and associated infrastructure is a primary impediment to mineral development in Alaska. While there have been many discoveries of world class deposits made in Alaska over the last two decades, lack of access has delayed or will definitely postpone their development.

  1. The Governor should reaffirm Alaska's rights of access as provided by RS 2477 and assert several pivotal rights-of-way which are vital for access to Alaska's remote mineralized areas.

  2. The Governor should adopt and implement a statewide infrastructure and transportation plan which includes the identification and development of access corridors within the state.

Coal Development Policy

- The appropriate state agencies, in consultation with the Legislature and the coal industry, should undertake a broad based review of coal development issues, including tax reform and unitary tax repeal, royalty and rental schedules, coal leasing programs, coal mining and reclamation programs, and future domestic energy demands. The objective of the review should be the establishment of a state coal development policy that will provide direction for the expansion of Alaska's coal industry and will provide guidance for policy decisions concerning future energy sources and international coal exports.

Clean Coal Technology

- The state should support appropriate research and development on clean coal technology that will benefit domestic power generation and the export of high-value coal through support of the newly created Alaska Science Foundation and through cooperative, political initiatives on behalf of the administration, Legislature, and congressional delegation to secure research and development funding and demonstration project grants from the federal Department of Energy Clean Coal Technology Program.

III. SUPPORT FOR MINERAL PROGRAMS AND SERVICES

Mineral Resource Education

- The Legislature and the Governor have continued to demonstrate support for the "Alaska Resources Kit: Minerals" by establishing a position in the Department of Education to oversee and implement the mineral resource curriculum that was jointly developed and funded by industry and by the state. Private industry, through the Alaska Mineral and Energy Resource Education Fund, shares in the annual cost of the newly created position and provides the annual costs of producing, maintaining and updating the educational kits. The Department of Education should be granted incremental funding to equally share as a full partner with industry in the cost of this educational program.

Professional and Technical Training

- To maximize job opportunities for residents and improve public acceptance of the industry, the professional education, vocational, and technical training services within the state should be strongly supported including enhancement of the School of Mineral Engineering at the University of Alaska Fairbanks.

  The Commission specifically recommends that the Governor and the Legislature support the budgets set forth by the Board of Regents for the University of Alaska Southeast and for the Mining and Petroleum Training Service (MAPTS) to allow these institutions to continue the entry level training program for underground mining and milling employees. The initial training programs have been highly successful at placing graduates into jobs at the Greens Creek Mine and an expanded program is needed to train additional residents for new mining jobs in Alaska. The direct support for the University of Alaska Southeast program will allow MAPTS to be more effective in its ongoing training programs in other areas of the state.

State Mineral Programs

- Geological mapping, geologic surveys, mineral assessments and the publication of geologic reports are critical to the state's ability to maintain and expand its mining industry as well as providing for the health and benefit of the residents of the state. The Division of Geological and Geophysical Surveys should be funded at a level sufficient to allow its existing professional staff to work on a full-time basis and to provide operating funds for field mapping projects, including the continuation of the five-year sand and gravel inventory program, quadrangle mapping, and other essential services.

- The basic level of services provided by the Division of Mining should be supported, and budgetary increments be provided to review and rewrite (if necessary), and to implement the state's offshore mineral leasing program.

- The mineral services and functions within the Department of Commerce and Economic Development, Division of Business Development, should be supported. Incremental funding should be provided to allow the division to conduct research and publish a report on potential export markets for Alaska industrial minerals and products, and on the availability of industrial mineral resources in Alaska.

Appendix A.

ALASKA MINERALS COMMISSION
STATEMENT OF PURPOSE

The Alaska Minerals Commission was created by the 14th Legislature in Chapter 98 of the Session Laws of 1986 and was established to make recommendations to the Governor and to the Legislature on ways to mitigate constraints on the development of minerals in the State.

The minerals industry offers the greatest potential of any Alaska industry for expanding and diversifying the State's economic base; for increasing Statewide employment; and for generating new wealth to create businesses and provide revenues for State and local governments.

However, Alaska has a complex pattern of land ownership and management; has overlapping and uncertain regulatory requirements; has unique geographic, geologic and climatic conditions; and has an underdeveloped transportation system.

To attract the capital necessary for the exploration and development of new mines; to ensure that mines can be developed feasibly and in timely fashion; and to ensure that producing mines remain viable—constraints on the industry must be mitigated.

The Alaska Minerals Commission will prepare annual reports recommending to the Governor and to the Legislature the adoption of legislation and the implementation of administrative policy that will best accomplish the statement of policy found in Article VIII, of the Constitution of Alaska:

> "It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest."

and the statement of policy found in the President's National Materials and Minerals Report to Congress of April 5, 1982:

> "It is the policy of this Administration to decrease America's mineral vulnerability by taking positive action that will promote our national security, help ensure a healthy and vigorous economy, create American jobs, and protect America's national resources and environment."

The goals of the recommendations of the Alaska Minerals Commission are to assure that the Legislature and the state administration encourage and promote development of a viable mining industry in the state.

Appendix B.

Chapter 98
Session Laws of Alaska, 1986
As Amended by
Chapter 71
Session Laws of Alaska, 1988

AN ACT

Relating to the Alaska minerals commission; and providing for an effective date.

Section 1. (a) The legislature finds that the minerals industries, including metallic minerals, industrial minerals, and hydrocarbons, have been traditionally and continue to be the major source of wealth and income in the state.

(b) The legislature further finds that there are major constraints on the continued development of a diverse mineral industry in the state, including the Environmental Protection Agency's effluent guidelines, state water quality standards and improperly classified streams and rivers, restrictions on surface access, complex and numerous permitting requirements, and limited access to minerals through mineral closing orders and restrictions on multiple use through state and federal land use plans.

Sec. 2. ALASKA MINERALS COMMISSION ESTABLISHED. (a) The Alaska Minerals Commission is established in the Department of Commerce and Economic Development.

(b) The commission is composed of 11 members. The commission shall be composed of individuals who have at least five years' experience in the various aspects of the minerals industries in the state. The governor shall appoint five members of the commission, one of whom must reside in a rural community. The President of the Senate shall appoint three members of the commission. The speaker of the House of Representatives shall appoint three members of the commission. Each member serves at the pleasure of the appointing authority.

(c) The commission shall make recommendations to the governor and to the legislature on ways to mitigate the constraints, including governmental constraints, on development of minerals, including coal, in the state.

(d) The commission shall report its recommendations each year to the governor and the legislature during the first 10 days of the regular session of the legislature.

Sec. 3. This Act is repealed February 1, 1994.

Sec. 4. This Act takes effect immediately in accordance with AS 01.10.070(c).

Appendix C.

Summary of the 6(i) Lawsuit *

Section 6(i) of the Statehood Act (P.L. 85-508) 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.

The state and the Legislature have, since 1980, been aware that the state's mining laws (AS 38.05.185—.275) may not fully comply with section 6(i). In 1982, the Legislature adopted AS 38.05.207, creating the requirement for a miner to apply for a "Production License" prior to the commercial production of minerals. This license requires a public notice and was enacted in hopes of curing the 6(i) deficiencies.

In 1983, a coalition of environmental, Native and fishing groups challenged in State Court that Alaska's mining laws were not in compliance with section 6(i). On May 1, 1987, the Alaska Supreme Court found that:

- Alaska's mining leasing system violates section 6(i) because it does not require the payment of cash rents or royalties; and

- Section 6(i) applies only to lands known to have been mineral-in-character at the time of state selection. (The Supreme Court specifically avoided the issue of what constitutes state selection and the meaning of the term mineral-in-character.)

All parties asked the U.S. Supreme Court to review the Alaska Supreme Court's decision. The state argued primarily that the state court should not have allowed these private interest groups standing to argue the case. The Trustees for Alaska, on behalf of the conservation groups, argued primarily that the term "mineral lands" refers to all state land. The U.S. Department of Justice submitted a brief which argued that 1) the Alaska Supreme Court erred in limiting the 6(i) lease requirement to lands that were known to be mineral-in-character at the time of state selection, and 2) that the Alaska court decision was advisory and final resolution could occur only in the federal courts. On May 1, 1988, the U.S. Supreme Court declined to consider this case.

Legislative action will be necessary to cure this defect. The significant questions to be addressed are:

1. Should the proposal include only "mineral lands" or all state land?
2. Should the proposal include rent, or royalty, or both?
3. What are the appropriate levels of rent and/or royalty?

* Prepared by the Department of Natural Resources, Division of Mining, September 1, 1988.

Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802 907-586-2345

HB 99 Mining Rents and Royalties

A combination of legal decisions on both the state and federal levels have determined that the state of Alaska must collect rents and royalties from mining claims on state land under Section 6(i) of the Alaska Statehood Act. The intent of 6(i) was to guarantee some revenue for the operation of the new state. Other extractors of non-renewable resources, namely the oil and gas and the coal industries, are already required to pay rents and royalties to the state.

HB 99 would require both rents and royalties be paid for mining activity on state lands, including submerged lands, but not including offshore lands. For rents and royalties to be equitable and straightforward to administer they should apply to all state lands: uplands, submerged, tidal, and offshore. While the proposed revenues would help defray the cumulative costs to the state of managing its mineral resources, they do not adequately reflect the loss to the state of a non-renewable resource. Reclamation is another cost of using the public land, but HB 99 does not include any reclamation language.

There is no doubt that HB 99 will have an economic impact on the miners. But those who profit from the extraction of resources which are a part of the public trust must provide some payment for that privilege. The mining license tax does not address this issue. In 1987 hardrock mining had a gross income of $105 million. In that same year the mining license tax provided a revenue of only $34,000 to the state.

Rents and Royalties

The sliding rental rate proposed in HB 99 should be increased so that the minimum rent starts at $1.00/acre for the first five years, increases to $2.50/acre for the next five years and finally goes to $5.00/acre for claims held ten years or more. These rental rates would put Alaska more on line with what other mineral states charge. We would also propose that there be a minimum rental payment of $500.00. The $500.00 minimum would better address the issue of discouraging speculation on state lands.

The mining royalties proposed in HB 99 would be either a minimum royalty based on gross income or a percentage of net income, whichever is higher. It is our position that the royalties should be based on gross income. Net income calculations are subject to various manipulations in the form of deductions. For example, the allowable deductions for the purposes of calculating net income for the mining license tax include: operating expenses, both direct and indirect, depreciation, depletion, wages and salaries, state corporate income tax, and royalties. Most mineral states charge royalties which range between 5 and 8% of gross or adjusted gross income. But there is a more compelling reason why Alaska's mining royalties should be based on gross income. The mineral resources of Alaska belong to the people of this state and are therefore part of the public trust. If the state based its royalties on net profits, it would be compensated only if the mine showed a profit. However, by basing royalties on gross income, the state insures that some compensation would occur, regardless of profitability. There are some who would argue that the state can stand to lose revenue in return for the benefits of employment and economic activity in rural areas. But the state must receive just compensation for the resources it owns, for the common ground we all have an interest in as citizens of Alaska.

The royalties suggested in HB 99 are too low. As an example, based on the table on page four of the proposed legislation, a mine that grosses over $2 million could pay as low as a 1% royalty. As stated previously, most states charge between 5 and 8% of gross.

Reclamation

Mining without reclamation destroys the value of the land for other uses and users. When the state commits land held in the public trust to a single use, statutory reclamation requirements would guarantee that the land will retain its multiple use capacity after mining is complete. Reclamation language must be included in HB 99. Such language can be found in federal statutes which require mining operations to restore the land.

AEL Position

Our position is that all miners on all state lands should make substantial payments towards use of public lands and extraction of non-renewable resources on those lands. Miners must also be required to reclaim the land before they return it to the people of Alaska for common use.

Sitnasuak Native Corporation

Post Office Box 905 • Nome, Alaska 99762
(907) 443-5296 • (907) 443-2632 • Fax: 443-3083

FEB 0 1 1989

February 1, 1989

Honorable Richard Foster
State of Alaska
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Honorable Richard Foster,

Hello. Thanks for the call earlier this week. I will be unable to attend the teleconference hearings on House Bill No. 99 or Senate Bill No. 129. The following should be considered as comments from SNC on this bill:

Sec. 38.05.211 **ANNUAL RENTAL.** The rate of $ .50 should be used for all of the years. The increased rate from 6 to 21 years and more is too expensive. Please keep in mind that in many cases mining claims, leasehold locations, and mining leases are held by small operators who spend seasonal parts of the year to do work on the land; and could actually take years to get the resources to operate a full capacity mine. Also the idea of years does not make sense in a climate where operators generally work for 120 days a year (or 1/3 of a calendar year) due to conditions of nature. Many claims are currently held by family operators who have spent two or three generations mining. The wording of 21 years + would require an annual payment of over $10,000.00 per year for a first generation miner if he held 50 claims. The rates suggested would probably be no problem for big companies with backing from the "Lower 48", but would be devastating on small operators.

Sec. 38.05.212 **PRODUCTION ROYALTY.** The rates seems reasonable for royalty.

However, why both? Why not just ROYALTY? The Alaska Supreme Court found that the mining leasing system needs to require cash rents or royalties.

What happened to mineral-in-character? The Alaska Supreme Court found that this section of the Statehood Act should apply to only lands known to be mineral-in-character at the time of selection. Should not this bill be written to require that the Department of Natural Resources review the original land selection files to correctly make this determination? Should not this bill also define mineral-in-character?

Why include ANNUAL LABOR in this bill? This specific bill should only address the concerns of the Alaska Supreme Court decision. Another bill should address Annual Labor. Should not the State consider dropping Annual Labor if the Rent or royalty is in place?

Sec. 38.05.242 DEFINITIONS. Should not the section for definitions include information on mining claims, leasehold location, and mining leases?

Sitnasuak's concern on this bill is that our lands neighbor the State's and fairness for all is necessary to ensure that the industry does not fail. The State should pass a revised version of this bill to meet the requirements of Section 6(i) of the Statehood Act which identifies the responsibility of the Department of Natural Resources as well as the miners. A seperate bill should be passed to delete Annual Labor, if rent or royalty is determined to be realistic.

If further information is needed, please do not hesitate to contact me, or Irene Anderson at our Land Department. Please keep us updated on the rewrites, so we may respond as necessary.

Thank you for your work on this issue.

Respectfully,

Robert L. Fagerstrom
President

RLF/IA/ia

. . . Resources . . .

Minerals Briefing: Legislation and Policy Issues

At least four bills will be before legislators this spring dealing with a new state mineral claim-staking program. The state's current program, modelled on the federal mining claims-staking system, has been ruled invalid by state courts, and must be replaced with the mineral leasing program, complete with royalty and annual rental provisions.

Currently, no form of rental (other than annual work requirements, similar to the federal program) is required on state mining claims. Nor is there a production royalty required on state claims, although there is a mining license tax that is based on net profits.

If Legislature D..esn't Act

If the legislature fails to act this spring, Trustees for Alaska and other groups who brought the original litigation may push for an injunction halting all new claim filings, or even operations on existing state claims. As the case now sits, they'll have good chance of getting some form of injunction, Department of Natural Resources officials believe.

So far, it appears the administration will introduce one measure; Sen. Jack Coghill (R-Nenana) plans a second bill; the Alaska Miners Association has prepared a bill which someone may introduce; lastly, environmental groups have their own version to offer.

Alaska's 100 million-plus acres of state-owned lands are increasingly important to minerals exploration companies because many of the federal lands with good mining potential, particularly the mountainous areas that are also very scenic, are now in national park or refuge systems and are, for all practical purposes, closed to mining.

Alaska state lands, as well as privately-owned Native lands, now offer the best prospects for major new minerals discoveries. *Getting the uncertainty over the state's claim system settled is important, because land tenure and establishing rights to a discovery are fundamental to resource explorers.*

Background on Controversy

Trustees for Alaska brought the original litigation, successfully arguing that the current state claims-staking system violates section 6i of the federal statehood act. That law gives Alaska the right to select and dispose of state-owned lands, but requires that mineral title be reserved to the state and 'leased' through some mechanism derived by the legislature.

The state administration, and Alaska miners, unsuccessfully argued in state courts that the existing claims program, which had been established in law by legislators, satisfied that requirement. But the state superior and supreme court disagreed, and further required that a mineral royalty and rental system be established along the lines of the state's oil and gas leasing system.

The court also, however, required the new system be used on lands of mineral character' at the time of state selection. But the court left it to legislators to define that term, which raises another point in controversy: Miners groups want a very narrow, conservative application, defining 'mineral in character' as determined by presence of an existing mining claim or a mineral ore body indicated, for example, by a federal or state geological survey bulletin.

Lands 'Mineral in Character'

Environmental groups, on the other hand, will want a very wide application of the lease program, and would like to see 'mineral in character' defined as applying to almost all of Alaska's 100-million acres of state land selections. How the term is defined will determine whether a new state mining lease program, complete with royalty and annual land rentals, *(Cont. Pg. 7)*

Fisheries:

New Tax On Offshore Floaters?

Watch for new bills to be introduced extending the state's raw fish tax to offshore floating processors who transport fish through state waters. Alaska's current raw fish tax applies now, for all practical purposes, only to onshore processors. Thinking behind the bill is that offshore processors use community port facilities, but pay little toward the cost of public services. Also, the current tax puts onshore processors at a competitive disadvantage against offshore floaters. The administration estimates the bill could net $40 million to the state.

***

From AK Leg Digest No 22/88