ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5980 HOUSE RESOURCES

384

State Mining Claims System *(Cont.)*

(Continued from Page 2) will apply to a small number of acres with essentially proven mineral discoveries, or whether it will apply to almost all state lands. Environmental groups already have one strong argument for a 'wide' application of the term, one that could also be used in court if the legislation isn't to their satisfaction on this point:

State land selections are made according to several criteria, with mineral potential high on the list. With 'mineral potential' listed as a justification for selection of given areas, it would be reasonable, it will be argued, that those lands were considered 'mineral in character' at the time of state selection. In fact, the administration has already bought off on the application of the term to all state-selected lands, in its proposed bill.

Administration "6i" Bill

Basic concepts behind the administration's bill are an annual rental provision of 50 cents/acre, escalating to $5/acre in 20 years (an inducement for companies not to just 'sit' on claims). For 40-acre state mining claims, this is $20/yr. for a claim, increasing to $200/claim in 20 years. The royalty is based on net-profits with a sliding-scale according to gross revenues, similar to the current mining license tax. There is also a minimum cash royalty, however. This gives the state a guaranteed 'floor' to revenues.

Environmental groups will likely urge a gross royalty, similar to those applied in oil and gas leases, rather than a net-profits royalty. The administration and miners will resist this, arguing that a gross royalty, because it takes money 'off the top' has a particularly harsh effect on marginal or high-cost producers. Another feature environmental groups will push strongly, which is opposed by the administration, is a reclamation requirement on state mining claims. DNR argues reclamation is a separate issue, appropriate for a different bill.

Early Action Needed

Resolving "6i", hopefully early in the session, is important, state resources officials say. With miners gearing up for the 1989 summer exploration season, they need to know as soon as possible what the new rules will be. DNR hopes to get a new system in place by September 1, to fit the present reporting period for annual work assessment. It will take time to adopt the necessary regulations and hold hearings, DNR says.

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Oil and Gas Issues *(Cont.)*

(Continued from Pg.3) and, in all likelihood, a costly buried submarine pipeline to shore. Because of these, and an unusually high state net profits royalty covering the North Star tracts, the prospect is not economic at this time. Last year AHC Chairman Leon Hess proposed a plan to Gov. Steve Cowper involving state tax and royalty abatements as an incentive to get North Star development going. Cowper rejected the idea, but some variation of it may be back before DNR officials later this month. Senior AHC officials are scheduled to meet with DNR in late January.

Gas Liquids Royalty Charges

Another royalty cost-accounting controversy is brewing between the state and the three major North Slope producers - Arco Alaska, Exxon and Standard Alaska Production. This involves charges by the companies for handling about 55,000-60,000 barrels/daily of natural gas liquids being produced along with oil in the Prudhoe Bay and Lisburne fields, and being processed through special process units built on the North Slope. Under the Prudhoe lease terms, producing companies are allowed to charge processing fees, in this case through new plant units, and apply those costs against the value of hydrocarbons, in this case NGLs, at the 'wellhead' for purposes of paying royalty and tax.

The issue here is that DNR feels charges are excessive, ranging from $3 to $7/barrel of NGLs in Prudhoe and up to $19/barrel in Lisburne. This means there is likely a 'zero' wellhead value, and no royalty paid on those NGL barrels. The revenue effect is about $17 million yearly to the state in royalty loss, and probably an equivilent amount in severance tax loss, DNR says. In comparison, the companies pay 60 cents/barrel as a processing charge for crude oil. That figure was established by agreement several years ago, as part of a settlement of 'upstream' litigation affecting oil. DNR has urged some kind of compromise on the issue, but the producers are hanging tough, the agency says. Ultimately, it may have to be resolved in court.

Arctic National Wildlife Refuge

In Congress, new bills to open ANWR to oil exploration are being introduced. The state administration will be involved in reviewing legislation and taking positions on issues like third party land exchanges and environmental stipulations. *There are reports that a new approach to land exchanges may be in the offing.*

***

Nos. 87-205, 87-206 and 87-371

In the Supreme Court of the United States

OCTOBER TERM, 1987

ALASKA MINERS ASSOCIATION, PETITIONER

v.

TRUSTEES FOR ALASKA, ET AL.

STATE OF ALASKA, PETITIONER

v.

TRUSTEES FOR ALASKA, ET AL.

TRUSTEES FOR ALASKA, ET AL., CROSS-PETITIONERS

v.

STATE OF ALASKA, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

CHARLES FRIED
Solicitor General

ROGER J. MARZULLA
Assistant Attorney General

LAWRENCE G. WALLACE
Deputy Solicitor General

EDWIN S. KNEEDLER
Assistant to the Solicitor General

PETER R. STEENLAND, JR.
Attorney

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTIONS PRESENTED

Section 6(i) of the Alaska Statehood Act provides that mineral interests in lands selected by the State of Alaska pursuant to Section 6(a) or (b) of that Act may be disposed of only by "lease," and that any lands or minerals disposed of in violation of Section 6(i) shall be forfeited to the United States in a suit brought by the Attorney General of the United States in the United States District Court for the District of Alaska.

The United States will address the following questions:

1. Whether respondents have the standing necessary to permit this Court to exercise jurisdiction under Article III of the Constitution.

2. Whether private parties such as respondents are barred by Section 6(i) from bringing an action in state court seeking a declaratory judgment that the State's mining laws governing the disposition of mineral interests in selected lands do not comply with Section 6(i).

3. Whether Alaska's mining laws violate the restriction in Section 6(i) of the Alaska Statehood Act that minerals may be disposed of only by a "lease" because they permit a person to extract "hard rock" minerals under a location system, similar to that established by the federal Mining Act of 1872, without payment of rents or royalties to the State.

4. Whether the restriction in Section 6(i) of the Alaska Statehood Act that permits minerals in lands selected by the State under that Act to be disposed of only by lease is limited to those lands that were known to be mineral in character at the time they were selected by the State from the United States.

is, in substance, a mineral location system, rather than a true "lease" system. Resolution of any questions concerning the permissible contours of a true "lease" system under Section 6(i) should await future amendments by the Alaska Legislature.

4. There is considerable force to respondents' contention in their cross-petition (87-371 Cross-Pet. 9-20) that the Alaska Supreme Court erred in holding that Section 6(i) applies only to lands that were known to be mineral in character when they were selected by Alaska (Pet. App. B71-B84). Section 6(i) states that "[a]ll grants" made by the Act "shall include mineral deposits"; that the grants under Section 6(a) or (b) are made on the condition that all dispositions shall be subject to a reservation of mineral interests to the State; and that "[m]ineral deposits in such lands shall be subject to lease by the State as the State legislature may direct." There is no indication that this all-inclusive language was intended to apply only to those lands whose mineral character was known when they were selected. To the contrary, as respondents point out (87-371 Cross Pet. 16-17), a provision that would have required the mineral character of the land to be determined when the patent issued to the State was deleted by the House Committee. See Pet. App. B79-B82. Moreover, the underlying purpose of Section 6(i)—to furnish a substantial financial base for the State—suggests that its all-inclusive language means what it says.

Despite the reference in the first sentence of Section 6(i) to the inclusion of mineral deposits in "[a]ll grants," the Alaska Supreme Court held that deposits *unknown* at the time of selection were not covered by Section 6(i) and instead were included in the grants of land made by Section 6(a) or (b). The Court reasoned that lands that were not known to be mineral in character were included in the original grants of school sections to other States and that the purpose of the 1927 Act, on which Section 6(i) was based, was only to include known mineral lands in those grants. See Pet. App. B43-B45, B72-B76. In those other States, however, the exclusion from the 1927 Act of lands whose mineral character was not known at the time of statehood did not reflect a decision by Congress to exempt the mineral deposits in such lands from *all* restrictions on their use and disposition. Lands whose mineral character was unknown at the time of statehood were not covered by the 1927 Act because

they were *already* part of the original grant of school lands made by the relevant statehood Act itself (cf. *United States* v. *Wyoming*, 255 U.S. 489, 500-501 (1921); *United States* v. *Sweet*, 245 U.S. 563, 572-573 (1918)); for this reason, any mineral deposits that were later discovered in such lands while they remained in state ownership presumably were *already* subject to the requirements in the relevant statehood Act that the lands be held in trust and be disposed of for school purposes. By contrast, the Alaska Supreme Court's decision limiting the reach of Section 6(i) appears to have the effect of excluding mineral deposits in lands whose mineral character was not known at the time of selection from *all* restrictions, and of allowing the States to give away the hard-rock minerals in such lands—unless Section 6(a) or (b) of the Statehood Act also imposes a trust obligation on the State to exact some rental or royalty payments for the extraction of minerals from lands selected by the State pursuant to those provisions.

Of course, even if the application of Section 6(i) does not turn solely on knowledge concerning the mineral character of particular land at the time it was selected (or the patent was issued (see Pet. App. B84 n.33)), the State might be free to classify land definitively as either mineral or non-mineral at a later date, such as immediately prior to a proposed sale or lease. But it does not necessarily follow that Section 6(i) should be construed to exclude lands in which mineral deposits are discovered by a mining claimant prior to such a formal classification and prior to any sale, lease or other disposition by the State, simply because those deposits were not identified at the time the lands were selected by or patented to the State, perhaps many decades earlier.

We do not propose here a definitive view of the proper interpretation of Section 6(i) in this regard. Respondents have filed their cross-petition on a conditional basis, urging that it be granted only if the Court grants the principal petitions filed by the State and the Alaska Miners Association. See 87-371 Cross Pet. 9-10; Trustees Br. in Opp. 10 n.3. Because we believe that the principal petitions should be denied, we submit that the cross-petition should be denied as well (see this Court's Rule 20.5). That course would permit the Alaska Legislature to address the issues raised by the cross-petition when it considers

whatever amendments to the State's mining laws it believes are required by the Alaska Supreme Court's decision on the other issues in the case.

CONCLUSION

The petitions and cross-petition for a writ of certiorari should be denied.

Respectfully submitted.

CHARLES FRIED
Solicitor General

ROGER J. MARZULLA
Assistant Attorney General

LAWRENCE G. WALLACE
Deputy Solicitor General

EDWIN S. KNEEDLER
Assistant to the Solicitor General

PETER R. STEENLAND, JR.
Attorney

MAY 1988

· LARGE LOW GRADE MINE, JUNEAU BOROUGH

	ALASKA	NEVADA	IDAHO
OREBODY TONNAGE	100,000,000	100,000,000	100,000,000
TPD PRODUCTION	15,000	15,000	15,000
ORE GRADE	0.05	0.05	0.05
DAYS PRODUCTION	360	360	360
TONS / YEAR	5,400,000	5,400,000	5,400,000
OZ PRODUCED	270,000	270,000	270,000
GOLD PRICE	400	400	400
LEASOR NSR	3.0%	3.0%	3.0%
CAPITAL COSTS	150,000,000	150,000,000	150,000,000
MINING COSTS/TON	10	10	10
% LABOR	40%	40%	40%
# PERSONAL	400	400	400
SALES TAX RATE	4.0%	5.3%	5.0%
PROPERTY TAX RATE	1.06%	0.00%	1.79%
FED CORP TAX RATE	34.0%	34.0%	34.0%
STATE CORP TAX RATE	9.4%	0.0%	8.0%
STATE MINING TAX	7.0%	1.9%	2.0%
STATE ROYALTY	3.0%	0.0%	0.0%
% DEPLEATION RATE	15.0%	15.0%	15.0%
COST DEPLEATION RATE /TON	0.45	0.45	0.45
DEPRECIATION EXP	1.00	1.00	1.00
PROPERTY GROSS	108,000,000	108,000,000	108,000,000
LEASOR ROYALTY	3,240,000	3,240,000	3,240,000
MINE GROSS	104,760,000	104,760,000	104,760,000
MINING COSTS	54,000,000	54,000,000	54,000,000
MINE NET	50,760,000	50,760,000	50,760,000
DEPRECIATION	5,400,270	5,400,270	5,400,270
DEPLEATION	15,714,000	15,714,000	15,714,000
TAXABLE INCOME	29,645,730	29,645,730	29,645,730
FED INCOME TAXES	10,079,548	10,079,548	10,079,548
STATE INCOME TAXES	2,786,699	0	2,371,658
STATE MINING LIC TAX	2,075,201	563,269	592,915
BOROUGH PROP TAX	1,594,500	0	2,650,328
STATE ROYALTY	889,372	0	0
TOTAL TAXES	17,425,320	10,642,817	15,694,449
EMPLOYEE SALES TAXES	1,036,800	1,384,128	1,036,800
COMPANY SALES TAXES	648,000	865,080	810,000
STATE & LOCAL GROSS	9,030,572	2,812,477	7,461,701

	ALASKA	NEVADA	IDAHO
OREBODY TONNAGE	1,000,000	1,000,000	1,000,000
TPD PRODUCTION	500	500	500
ORE GRADE	0.30	0.30	0.30
DAYS PRODUCTION	360	360	360
TONS / YEAR	180,000	180,000	180,000
OZ PRODUCED	54,000	54,000	54,000
GOLD PRICE	400	400	400
LEASOR NSR	5.0%	5.0%	5.0%
CAPITAL COSTS	15,000,000	15,000,000	15,000,000
MINING COSTS/TON	65	65	65
% LABOR	60%	60%	60%
# PERSONAL	100	100	100
SALES TAX RATE	4.0%	5.3%	5.0%
PROPERTY TAX RATE	1.06%	0.00%	1.79%
FED CORP TAX RATE	34.0%	34.0%	34.0%
STATE CORP TAX RATE	9.4%	0.0%	8.0%
STATE MINING TAX	7.0%	1.9%	2.0%
STATE ROYALTY	3.0%	0.0%	0.0%
% DEPLEATION RATE	15.0%	15.0%	15.0%
COST DEPLEATION RATE /TON	4.50	4.50	4.50
DEPRECIATION EXP	10.00	10.00	10.00
PROPERTY GROSS	21,600,000	21,600,000	21,600,000
LEASOR ROYALTY	1,080,000	1,080,000	1,080,000
MINE GROSS	20,520,000	20,520,000	20,520,000
MINING COSTS	11,700,000	11,700,000	11,700,000
MINE NET	8,820,000	8,820,000	8,820,000
DEPRECIATION	1,800,090	1,800,090	1,800,090
DEPLEATION	3,078,000	3,078,000	3,078,000
TAXABLE INCOME	3,941,910	3,941,910	3,941,910
FED INCOME TAXES	1,340,249	1,340,249	1,340,249
STATE INCOME TAXES	370,540	0	315,353
STATE MINING LIC TAX	275,934	74,896	78,838
BOROUGH PROP TAX	159,450	0	352,407
STATE ROYALTY	118,257	0	0
TOTAL TAXES	2,264,430	1,415,146	2,086,847
EMPLOYEE SALES TAXES	336,960	449,842	336,960
COMPANY SALES TAXES	93,600	124,956	117,000
STATE & LOCAL GROSS	1,354,741	649,694	1,200,558

91 royalty schedule analysis   91royal.prn

minimum income	maximum income	minimum royalty	net income percent	effective rate on minimum	effective rate on maximum
1	49,999	200	1.0%	20000.0%	0.4%
50,000	99,999	750	2.0%	1.5%	0.8%
100,000	249,999	2,000	2.0%	2.0%	0.8%
250,000	499,999	5,000	2.0%	2.0%	1.0%
500,000	2,499,999	22,500	2.0%	4.5%	0.9%
2,500,000	99,000,000	50,000	2.0%	1.2%	0.0%

net profits as % of gross applied to income levels

20% minimum	20% maximum	30% minimum	30% maximum	40% minimum	40% maximum
0	100	0	150	0	200
200	400	300	600	400	800
400	1,000	600	1,500	800	2,000
1,000	2,000	1,500	3,000	2,000	4,000
3,000	10,000	3,000	15,000	4,000	20,000
15,000	594,000	22,500	891,000	30,000	1,188,000

oz gold production at $400.00

minimum	maximum
0.0025	125
125	250
250	625
625	1250
1250	6250
6250	247500

Neil McKinnon
House Resources

KENT DAWSON COMPANY

P.O. Box 20790
Juneau, Alaska 99802
Phone: (907) 463-2533
FAX: (907) 586-8328

January 23, 1989

Include in comm packets. CM

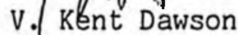
The Honorable Curt Menard
Co-Chairman
House Resources Committee
Pouch V
Juneau, AK 99811

Dear Mr. Menard:

Attached are some position papers and comments by the Alaska Miners Association relative to the 6 (i) issue.

The Alaska Miners Association is in the process of drafting legislation which will reflect these positions.

Sincerely,



V. Kent Dawson

ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, AK 99503 (907) 276-0347

MEMORANDUM

TO: R. Hughes

FROM: P.S. Glavinovich

RE: 6(i) Presentation - Abstract

Section 6(i) of the Alaska Statehood Act requires that mineral deposits in mineral lands granted to the State shall be subject to lease by the State as the State legislature may direct.

In 1984 the Trustee's for Alaska filed a lawsuit that challenged the State's mining claim location system as not being in compliance with Section 6(i). The State of Alaska was named as the defendant in the lawsuit but the Alaska Miners Association quickly intervened. In 1985, the Alaska Superior Court rejected the Trustee's arguments and found the State's location system to be incompliance with Section 6(i). The Trustee's appealed to the Alaska Supreme Court. The Alaska Supreme Court reversed the Superior Court and found that Alaska must recover rent or royalties from mining leases on lands that were mineral-in-character at the time of State selection. The State and AMA appealed the Supreme Court's opinion to the U.S. Supreme Court. Notwithstanding the recommendations of Alaska's congressional delegation and the Department of Interior to take the case, the U.S. Supreme Court refused to grant writ.

The current guidelines for the resolution of the 6(i) question come for the Superior Court'd Declatory Judgment of Nov. 11, 1987. In that Judgment Judge Serdahley ruled that:

> To comply with Section 6(i) of the Alaska Statehood Act, the State's mineral leasing system must include some process for determining which lands were of known mineral character at the time of selection and must further require the payment of rents or royalties for the extraction of mineral deposits from such lands.

The AMA has developed a definition and test that will identify those lands that could be judged to be mineral-in-character at the time that the land was selected by the State. We are

also drafting rent and/or royalty parameters that we feel will satisfy the court order but will not jeopardize a viable mining operation.

The AMA committee responsible for developing a solution to the 6(i) question has concluded that a satisfactory resolution of the 6(i) issue must provide for:

1. The right of self initiation.

2. Tenure of the claimant.

3. Fair rent or royalty to the State from those lands that were mineral-in-character at the time of State selection.

4. An honest definition of mineral-in-character.

P.S.G.
10/14/88

ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, AK 99503 (907) 276-0347

Sept. 9, 1988

The Honorable Steve Cowper
Governor, State of Alaska
P.O. Box A
Juneau, Alaska 99811

Re: Implementation of Superior Court Order, November 19, 1987, re Section 6(i) of the Statehood Act

Dear Governor Cowper:

The State Supreme Court has concluded that the State's current mineral location system is not in compliance with Section 6(i) of the Statehood Act because it does not require the payment of rent or royalty on mining leases. The Court further concluded that Section 6(i) applies only to those lands known to have been mineral in character at the time that they were selected by the State.

The Department of Natural Resources is currently studying several methods by which the State's location system may be brought into compliance with the Supreme Court opinion and the Superior Court's order. The Alaska Miners Association considers the State's implementation of the 6(i) decision critical to the future of mining on state lands. We would like to identify several components that we feel must be a part to any rational solution to the 6(i) question.

1. The right of self initiation - the State constitution requires that a prospector, individual or a corporate that risks considerable time and money must be given a preferrential right to mine the discovery. Any departure from the current discovery philosophy will seriously erode any incentive to explore upon state land.

2. Tenure - a claimant must be assured that he will not be subjected to some arbitrary time limit within which he must place the claim into production or lose it. Mining history is replete with examples of discoveries that required fifteen to thirty years before they could be developed as profitable producers. This is particularly true of operations in the northern environs.

3. Fair rent or royalty - the AMA believes that the Supreme Court erred in deciding that the State must require additional rent or royalty from mining leases. We continue to believe that

ALASKA MINERS ASSOCIATION, INC.

the mining license tax constitutes an adequate and fair production royalty and that the annual labor requirement of $200 per claim represents an adequate rent. Nevertheless, in order to comply with the Supreme Court's opinion, we strongly recommend that the State develop a rent or royalty schedule that will; (1) satisfy the Superior Court Order and, (2) not jeopardize nor act as a disincentive to the constructive development of state mining claims. We caution that in seeking a solution to the 6(i) issue, that State not adopt requirements that will penalize a claimant upon state land.

4. Mineral in character - the State Supreme Court specifically concluded the Section 6(i) applies only to those lands known to have been mineral in character at the time of state selection. Judge Serdahley, in his Declaratory Judgement, ordered that the "... State's mineral leasing system must include some process for determining which lands were of known mineral character at the time of selection".

We do not know how the State proposes to effecuate Judge Sedahley's order but we suggest that mineral in character be determined with a prescribed procedure such as that which we have developed and present to you in the form of the enclosed attachment.

The current developments at Red Dog and Greens Creek have sent a signal to the mining industry that mines can be made in Alaska. We, as concerned Alaskans, do not wish to see the State implement a mineral management system that will jeopardize or impede rational and responsible resource development upon state lands. We are prepared to assist you and your people develop a workable solution to the 6(i) issue.

Sincerely,
ALASKA MINERS ASSOCIATION

Richard A. Hughes
President

ATTACHMENT: Mineral in character language

cc: Paul Glavinovich
Jim Burling
Judy Brady
Jerry Gallagher

Oct. 13, 1988
C. McVee

RENT OR ROYALTY ISSUE - STATE MINING CLAIMS

The State Supreme Court has concluded that the State's current mineral location system is not in compliance with Section 6(i) of the Statehood Act because it does not require the payment of rent or royalty on mining leases.. The Court further concluded that Section 6(i) applies only to those lands known to have been mineral in character at the time that they were selected by the State.

The Alaska Miners Association considers the Legislatures implementation of the 6(i) decision critical to the future of mining on state lands. We feel any solution must recognize:

1. The right of self initiation - the State constitution requires that a prospector, individual or a corporation that risks considerable time and money must be given a preferrential right to mine the discovery.

2. Tenure - a claimant must be assured that he will not be subjected to some arbitrary time limit within which he must place the claim into production or lose it. Mining history is replete with examples of discoveries that required fifteen to thirty years before they could be developed as profitable producers.

3. Fair rent or royalty - the AMA believes that the Supreme Court erred in deciding that the State must require additionsl rent or royalty from mining leases. We continue to believe that the mining license tax constitutes an adequate and fair production royalty and that the annual labor requirement of $200 per claim represents an adequate rent.

4. Mineral in character - the State Supreme Court specifically concluded the Section 6(i) applies only to those lands known to have been mineral in character at the time of state selection. Judge Serdahley, in his Declaratory Judgement, ordered that the "...State's mineral leasing system must include some process for determing which lands were of known mineral character at the time of selection".

We do not know how the State proposes to effecuate Judge Sedahley's order but we suggest that mineral in character be determined with a prescribed procedure such as that which AMA has developed.

AN ACT RELATING TO THE ASSESSMENT OF RENTS AND ROYALTIES ON STATE MINERAL LANDS

This Act establishes a procedure for assessing rents and royalties on State mineral lands which is equitable and consistent with public policy objectives, including the policies adopted by the Alaska Legislature to encourage mineral exploration and development.

1. Prior to the commencement of production on State mineral lands, rentals should be charged according to the following schedule:

   (a) Years one through ten - $.25 per acre;
   (b) Years ten through twenty - $.50 per acre;
   (c) All years after twenty - $.75 per acre.

2. Upon commencement of production, the lessee should be required to pay to the State of Alaska a two percent (2%) net profits royalty. Net profits and reporting requirements shall be determined as set forth in AS 43.65.010 through AS 43.65.060.

3. Upon commencement of production, the lessee should pay a minimum royalty equal to the rental set forth in Paragraph 1 if such amount is greater than the yield to the State of Alaska from the two percent (2%) net profits royalty. The lessee should not be compelled to pay both the minimum royalty and the two percent (2%) net profits royalty.

4. All rents and/or royalties paid in satisfaction of the requirements of Section 6(i) of the Alaska Statehood Act should be credited against any taxes payable to the State of Alaska under the Mining License Tax set forth in AS 43.65.010, et seq.

5. State mineral lands or lands deemed to be mineral in character shall be determined by the following procedure.

(a) A state mining claim is deemed to be located on land that is mineral is character if, at the date of state selection, the land underlying the claim was known to have contained valuable mineral in sufficient quantities such that a prudent person would expend time and resources towards the development of the mineral deposit, with a reasonable belief that such minerals in the deposit would be marketable at a profit.

(b) The Commissioner of the Department of Natural Resources shall find a claim to be of mineral in character if, based upon facts known at the date the land was selected by the state, the claim:

1. Contains an actual exposure of valuable minerals capable of being marketed at a profit at date of state selection, or
2. is contiguous to a claim with an actual exposure of valuable minerals capable of being marketed at a profit at date of state selection, or,
3. if a placer deposit, is within one mile from a placer deposit that has existing reserves that were producing or were capable of producing valuable minerals at a profit at the date of selection, or,
4. if a lode deposit, is on and within one mile of a known mineral deposit that has produced or is capable of producing valuable minerals at a profit at the date of state selection.

(c) If a claim fails to meet the tests of subsection (b), then the claim is conclusively presumed not to be of mineral character.

6. The Commissioner shall make mineral character determinations on a mining claim within three years of a request for such determination from a claim owner. If no request is received within one year from the enactment of this chapter, or within one year of the location of any mining claim, whichever is later, the claim shall be considered to be mineral in character for purposes of determining rents and/or royalties under this Act.

7. From the date of the enactment of this Act, or from the date a claim is located, whichever is later, a claim owner shall be responsible for the payments of rents and/or royalties that would be payable as if the claim were mineral in character. If the Commissioner determines that a claim is not mineral in character, then those rents and/or royalties, based as if the claim were mineral in character, shall be refunded to the claim owner. If the Commissioner fails to make a mineral character determination within three years from the date of a request for determination, those rents and/or royalties shall be reduced by 50% from the time that a determination was requested to the time that the determination is made.

MINING AND THE 6(I) LAWSUIT

The Alaska Supreme Court issued a ruling in May 1987 which will require Alaska to rewrite its laws governing mining on state-owned lands. The ruling stems from a suit initiated by the Trustees for Alaska which contended that the State of Alaska is in violation of federal law by not requiring rents or royalties to be charged on state lands subject to Section 6(i) of Alaska's Statehood Act.

Section 6(i) of the Alaska Statehood Act requires that:

> The grants of mineral lands to the State of Alaska . . . 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 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.

The Trustees argued that "mineral lands" subject to the 6(i) leasing provision were all lands granted to the state containing minerals, whether the presence of the minerals was known at the time of selection or not. The Trustees also argued that, since the state's mining claim system did not require cash rents or royalties, it was not a leasing system as required by the Statehood Act.

The State of Alaska argued that the 6(i) leasing provision applied only to lands known to be "mineral lands" at the time of their selection. The state also maintained that the Statehood Act does not specifically require a revenue producing rent or royalty, rather that choice was left to the discretion of the State Legislature and, furthermore, that economic activities on state mining claims represent a benefit to the state comparable to revenue generated from rents or royalties.

Finding merit in both arguments, the Alaska Supreme Court ruled that the state must charge a rent or royalty for minerals mined on lands subject to 6(i), but only those lands known to be "mineral in character" at the time of state selection were subject to the 6(i) leasing provision.

The Alaska Supreme Court ruling was appealed to the. U.S. Supreme Court but was denied a hearing. As a result, the state will be required to amend its statutes during the upcoming legislative session to bring its mining system into compliance with the court ruling. If appropriate legislative action is not taken, the State Superior Court indicated during motions made last year that it would entertain a request for an injunction against all mining activity on state lands.

At the September meeting of the Alaska Minerals Commission concern was expressed that the conditions attached to the use of state land, including mineral rents, royalties and other requirements might act as disincentives, encouraging potential investment in Alaska mineral development to flow to other states and countries. Four major components were identified by the industry that they believe must be included in changes to the laws in order to maintain a viable mining system.

1. Individuals (and corporations) must be able to self-initiate the exploration for minerals on available state lands and a preferential right to mine must be attached to a valid mineral discovery.
2. As the time between the discovery of a mineral deposit and the profitable production of the deposit may take many years, there should be no arbitrary time limit imposed upon the right of tenure.
3. The amount of rent or royalties charges should not be a disincentive nor penalize a mining claimant.
4. The ruling should be applied only to mining claims active at the time of state selection or to lands within one mile of a known mineral deposit that, at the time of selection, had produced — or was capable of producing — valuable minerals at a profit.

On the other hand, Rural Alaska Community Action Program and several other organizations interested in 6(i) legislation including, the Tanana Chiefs Conference, the Bering Sea Fishermen's Association, the Northern Alaska Environmental Center, the Alaska Center for the Environment, Nunam Kitlutsisti, and the Trustees for Alaska have indicated that three principles should guide the implementation of 6(i):

1. The new leasing requirements should be applied to all state lands to minimize problems with implementation and to maximize revenues to the state.
2. Both rents and royalties should be charged to maximize revenues to the state.
3. The legislation should also contain provisions requiring state review of mining operations and land reclamation.

Although the federal government owns twice as much land in Alaska as is owned by state government, there is twice as much state land presently open to mineral and other resource development as federally-owned lands. Legislation on how this land is handled will play a crucial role in shaping the development of the minerals industry in Alaska for the foreseeable future.

6-i

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

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

STATEMENT OF THE CASE

This action arises under Section 6(i) of the Alaska Statehood Act, the act of admission under which Alaska became a State in 1959. Section 6 of the Statehood Act is the land grant provision, under which the new state obtained the right to acquire more than 103 million acres of land from the federal government. To Alaska and the federal government alike, this provision is of paramount importance both politically and economically. Subsection (i) of this land grant provision imposes a limitation upon the State's ability to alienate to third parties its title to certain of its Statehood Act grant lands -- those are "mineral lands." This "mineral lands" provision is nearly identical to that found in the School Lands Act of 1927. The legislative history of the Alaska Statehood Act establishes that Congress intended to follow the School Lands Act in the land grant provision of the Alaska Statehood Act. Thus, judicial interpretation of Section 6(i)'s "mineral lands" provision may have broad significance for all of the public land grant states that received title to federal lands under the School Lands Act of 1927.

The mining industry has historically been an important contributor to the very limited private sector economy in the State of Alaska. The Alaska Miners Association ("AMA"), is a non-profit public interest corporation having more than 1,800

members throughout the State. Since its organization in 1939, the AMA has worked effectively for the improvement of the administration of state and federal mining laws. The AMA's membership shares with the public at large an interest in maintaining valid statutes and regulations to assure sound title to mining properties and a clear definition of the relative rights of mineral locators, the State of Alaska and third parties. To these ends, the AMA sought and obtained leave of the state trial court to intervene in this case in 1984.

In the late 1950s, anticipating the imminent attainment of statehood, the legislature of the Territory of Alaska enacted a comprehensive code for the management of state lands, the Alaska Land Act (Alaska Statute 38.05). This statute establishes a system for the acquisition of the right to explore for and develop minerals in state lands. Under this system, a person may initiate rights to mine by entering state lands, discovering valuable minerals and physically locating a mining claim. This system of initiating the right to acquire minerals in state lands is required by the Alaska Constitution. It is based upon the well-established federal mining claim system under the Mining Law of 1972; but with one difference which is essential to the understanding of this case. Alaska's state law, unlike its federal counterpart, does not allow for the acquisition of title to the land in which mining rights are held. The owner of a

federal mining claim may, upon proof of compliance with applicable laws, obtain fee title to the land by patent from the United States; the owner of a state mining claim under Alaska law, however, may not "go to patent." The State retains title to the land pursuant to state statute. AS 38.05.125.

This system for the acquisition of the right to mine lands acquired by the State of Alaska under the Alaska Statehood Act, established by Alaska Constitution and the Alaska Land Act on the eve of statehood, is the foundation upon which tens of thousands of state mining claims have been acquired, maintained and developed by the mining industry for 30 years in Alaska. In the decision from which this petition is taken, the Alaska Supreme Court held that this system of state mining law is a violation of Section 6(i) of the Alaska Statehood Act -- and therefore unconstitutional under the Supremacy clause.

Section 6(i) has three distinct provisions whose meaning and interaction are at issue in this case:

1. The so-called "mineral alienation condition," which is set forth in the second sentence of the subsection. This part of the statute imposes an "express condition" that all grants by the United States to the State of Alaska of "mineral lands" under subsections 6(a) and (b) must contain a reservation of minerals.

2. The "subject to lease" provision appearing in the third sentence of the subsection, wherein it is provided that "mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct."

3. The proviso at the end of the subsection authorizing the U.S. Attorney General to proceed in the United States District Court for the District of Alaska for forfeiture of "lands or minerals hereafter disposed of contrary to the provisions of this section."

The self-styled "public interest" environmental organizations that filed this action against the State of Alaska contend that the entire mining law system in effect in Alaska for the last 30 years is invalid under this federal statute.[1/]

The mechanism for enforcing the "mineral alienation condition" of Section 6(i) of the Alaska Statehood Act is crafted to give the United States the exclusive authority to determine

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1/ The plaintiffs also argued in state court that the state mining law is invalid under the Alaska constitution, a contention which if sustained would have served as an adequate and independent state law ground for the result reached in the Alaska Supreme Court. This state constitutional argument was rejected by the Supreme Court. Its opinion is unequivocally grounded upon the plaintiffs' federal statutory claim only. Thus, there can be no doubt as to this Court's jurisdiction to grant review under 28 U.S.C. § 1257.

how to respond in the event of a violation. Under the statute, the United States has retained a right of entry in all "mineral lands" acquired by the State of Alaska under subsections (a) and (b) of the Statehood Act land grant provision. This right of entry reserved to the United States may be invoked at the discretion of the United States Attorney General, by filing an action in the United States District Court for the District of Alaska. Though the plaintiffs in this case believed that the state mining law system violated Section 6(i)'s mineral alienation condition, they did not attempt to persuade the U.S. Attorney General to exercise the statutory right of entry. They did not make formal demand upon the United States to enforce the law as they interpret it; nor did they sue the U.S. Attorney General in federal district court under the mandamus statute. Instead, they elected to proceed by filing an action in state court. In effect, this is an attempt to adjudicate questions concerning the content and scope of the real estate interest retained by the United States of America under Section 6(i) without notice to or participation by the United States itself. The outcome is a detailed pronouncement by the Alaska Supreme Court as to the interpretation and application of Section 6(i), in an action to which the real party in interest, the United States of America, did not participate and by which it cannot be bound. The Alaska Supreme Court's decision may be to require

wholesale changes in the state mining law sytem in order to avoid the possible forfeiture of state lands to the United States through exercise by the United States of its right of entry under Section 6(i). Yet, ironically, the holder of that right of entry (the United States) has never asserted it, and was never given an opportunity to participate in any fashion in the state court proceedings that resulted in this broad inquiry into the nature and scope of the federal property interest retained under Section 6(i).

HB
99
(File 2)

Alaska State Legislature

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

committee on House Bill 99, dated 1-27-'89.
bill/subject

The Best Solution to the "6(i)" problem To have that provision "6(i)" of the Statehood Act set-aside by Congress so the primary intent of the State Constitution and Alaska Statute Mining Law (based on the U.S. mining law of 1872) can Continue. This basic system has worked very well for over 100 years and much of America's greatness and Alaska as we know it today is as a result of the basic concepts of Ownership embodied in the old Fed. + Ak. mining law.

I fear that if the basic American tenant of ownership is taken away + replaced with the more socialistic concept - that mining activity will decrease just when the state needs mining.

Signed: James H. Hansen.
Testifier

Representing (Optional)

Box 246, Nome Alaska 99762
Address

907--443-5425
Phone No.

Alaska State Legislature

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

committee on House Bill 99, dated 1-26-89.
bill/subject

If the mineral industry must try to bear with a leasing system, I hope it can be temporary until such time as Section "6(i)" can be modified.

Until then; Every State Claim is worth Less to the Owner. Under a leasing situation, either the Annual Labor Sec 38.05.210 or Annual Rental Sec 38.05.211 or Production Royalty 38.05.212 should be deleted. Do not have all three! It is unnecessary & unfair a burden. If the Annual Rental is retained it should never go above $1.00/acre. 10 or more years is very common to hold & develop claims (for many reasons) and an excessive rental would make the claims less valuable & perhaps even force an owner to eventually drop the property after having spent much time, effort & money on exploration.

Signed: Tamas H. Hansen
Testifier

Self.
Representing (Optional)

Box 246, Nome Ak., 99762
Address

907-443-5425
Phone No.

8/85 Legislative Information Office

Alaska State Legislature

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

committee on House Bill 99, dated 1-26-89.
bill/subject

Are these Lease rights transferable? (Sellable-Sub leaseable etc) I hope so.
Now the requirement for payment should fall on the Operator not on the original state lessee! — (If they are not one & the same the operator may not for one reason or another be able to pay the production royalty to the state or make his payment to the original lease hold in which case the orig. lease hold is responsible to the State & could loose every thing through the Abandonment Provision.
Now how much will he lose? — Which claims how many etc? make the operator responsible.
Be aware of snowballing administrative Costs.
Also, be careful lest we loose much of what Alaska so richly was is & can be.

Signed: James H. Hansen
Testifier

Box 246 Nome Ak. 99762
Representing (Optional)

Self
Address

907-447-5425
Phone No.

9/86 Legislative Information Office

Alaska State Legislature

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

committee on House Bill 99, dated 1/21/88
bill/subject

I listened to your explanation on house bill 99 and was wondering why there couldn't be either a production royalty or a annual rental (not both) [illegible] "Section 61". Also I am not clear as to the royalty payments on claims that are not producing. Is it a minimum of $200.00 per claim or $200.00 per person who owns claims? Please give my congradulations to Richard Foster for realizing the reality of the

Signed: Marilyn Pushcar [signature]
Testifier

Marilyn + Jerry Pushcar
Representing (Optional)

Box Nome
Address

2754
Phone No.

Alaska State Legislature

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

committee on House Bill 99 bill/subject, dated 1/26/88

situation for the family operation and the small time prospector that will be doomed to eventual extinction if this bill becomes law. As a rural resident I am sure he realizes the potential damage absorbed by the struggling miner, opposed to his occasional visiting counterparts from bigger areas who [illegible] pacify special interest groups. The state obviously cannot conduct its affairs without big business revenue but why must it do so at the expense of the few remaining individuals who choose to maintain a lifestyle that Alaskan tradition and tourism is built around.

Signed: [illegible]
Testifier

Representing (Optional)

Address

Phone No.

(2)

RECEIVED FEB 07 1989

TO: 1989 Alaska Legislature

FROM: Curtis J. Freeman, President
Fairbanks Exploration Inc.

DATE: January 31, 1989

SUBJECT: SB 129 and HS 99: Proposed 6i legislation.

On January 19 and 20, SB 129 and companion bill HB 99 were introduced to address the establishment of rental or royalty payments on certain mineral lands in Alaska. These bills were introduced at the request of Governor Cowper in response to the findings of the Alaska Supreme Court on the 6i lawsuit. Our firm has had considerable experience with foreign and domestic mining concerns who are interested in investing in Alaska's mineral resources. With this experience in mind, I have reviewed the proposed legislation and would like to offer my recommendations.

Alaska is an extremely risky place to explore for and develop mineral properties. This observation is not a perception, it is a fact. The 6i legislation as proposed would only increase that risk. Recent developments in Alaska exemplify the effect of excessive risk on mineral exploration and development: in 1988 one of the top ten US gold and silver producers pulled out of Alaska after nearly 20 years in the state. In another case, a world-class Alaskan mineral deposit which constitutes the largest deposit of its kind in North America was put up for sale in 1988 by its owners. What can cause such drastic action at a time when the rest of the free world is in the midst of a major mining boom? You can be certain that the extremely complex and expensive nature of Alaskan mining regulations played a significant role in the above decisions.

The proposed legislation pertaining to the 6i issue must be complemented for its focus and brevity. However, in order to comply with the directives of the Alaska Supreme Court while at the same time minimizing the negative effects of additional regulations, the following changes are recommended:

1. Under certain conditions in the U.S. mining industry, lessees or operators may be required by contract to pay nominal rental or advanced royalty payments to property owners prior to production. Once production is reached, production royalties replace rental or advance royalty payments. Furthermore, pre-production payments are usually deductible from production payments. I recommend that rental payments should cease when production begins and previously paid rental payments should be deductible from production royalties.

FAIRBANKS EXPLORATION INC.
P.O. Box 82549 • Fairbanks, Alaska 99708 • (907)479-7547

2. Rental or royalty rates should be established by statute and should be fixed at a flat rate for the life of the claim. Long-term planning can not be conducted unless such security is present. Please remember that many mineral properties are leased to corporations or individuals who must already pay advance royalties or production royalties to the claim owner. Additional royalties levied by the state must not impose an unreasonable burden on prospective development. I recommend a rental rate of not more than ten cents per acre and a net income production royalty of not more than one percent. Gross revenue royalties should not be considered under any circumstances due to the small profits which are common in the mining industry, particularly during initial production years.

3. If rental fees are assessed on mining lands, annual labor requirements on those lands should be eliminated entirely.

4. The question of whether reclamation requirements should be addressed in the proposed 6i legislation is outside the scope of the Supreme Court's ruling and should not be considered in any form by the legislature. This point aside, I think you should be made aware that representatives of Trustees for Alaska and the Northern Alaska Environmental Center presented false information to you when they testified that there are no reclamation requirements on mining activities conducted on state lands. The two principal permits which are required when ground disturbance is planned on state lands are the Miscellaneous Land Use Permit (MLUP) and the Annual Placer Mining Application (APMA). Both permits require stringent reclamation requirements on lode or placer projects prior to approval. If you have any doubts about this subject, I urge you to contact Mr. Judd Peterson or Mr. Bruce Campbell with the Division of Mining in Fairbanks. These gentlemen help miners fill out hundreds of APMA and MLUP applications each year.

5. A critical clause in 6i legislation pertains to lands which are mineral in character at the time of state selection. The proposed legislation intends to levy rental and royalty fees from all state lands. This is far beyond the intent of the Supreme Court's ruling and should be corrected by restricting rental or royalty payments to only those lands which were known to be mineral in character at the time of state selection. The Division of Geological and Geophysical Surveys and the Division of Mining should be directed to produce maps at an appropriate scale which outline those areas known to be mineral in character at the time of state selection. If a claim is within such an area, rent or royalty payments should be applied. The presently existing location system should be retained for all other claims on state ground.

6. Any new legislation passed to comply with the Supreme Court's directives concerning 6i should contain wording that repeals the Alaska Mining License Tax for any property which is found to be mineral in character at the time of state selection.

7. Any rental payment that is due the State should be payable within a reasonable amount of time after its due date without penalty to

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the owner or lease-holder. Since exploration and production often are not completed until September or October of a given year, the claim owner or lessee should have ample time to analyze the current year's findings to determine whether a specific claim is worth retaining. Wording should be such that rental payments for the following year are due within 90 days after noon, on September 1 of the current year. This same wording already is in place for filing of annual labor documents.

8. Lines 15 through 17 on page 4 of SB129 should be eliminated. Ignoring the considerable expense of monitoring inventoried metals, it is not in the best interest of the state to assign a prevailing market value to unsold inventory since most unsold inventory is stockpiled because of unfavorably low metal prices. The wording in SB129 would force the state to accept lower production royalties while at the same time interferring in the internal marketing prerogatives of private industry. Production royalties should be calculated based on the actual sale price at the time metals are sold.

I urge you to consider the impact of this legislation carefully, not only from a simple monetary standpoint, but from a public relations standpoint as well. Many potential investors are monitoring the progress of mineral exploration and development in Alaska, including the evolution of the regulatory environment in the state. Since Alaska's mineral industry must compete in a world economy, we must be careful not to send the wrong signals at a time when Alaska is just beginning to recover from a prolonged metals slump. If you believe that Alaska should encourage the responsible development of its natural resources, as our statehood act dictates, then please incorporate the changes I have recommended above. If I can be of further assistance as you formulate this legislation, please contact me.

xc: Governor Cowper
Commissioner Boston-Gorsuch

FAIRBANKS EXPLORATION INC.
P.O. Box 82549 • Fairbanks, Alaska 99708 • (907)479-7547

SB129/HB 99 RENTS AND ROYALTY PAYMENTS FOR MINING CLAIMS ON STATE LANDS

SB 129 Public Testimony - Monday, Jan. 30, 1989 - Anchorage
HB 99 Public Testimony - Friday, Feb. 3, 1989 - Anchorage

Good afternoon chairmen and members of the Senate/House Resource Committee and thank you for providing me the opportunity to comment on SB129/HB99.

My name is **Kevin Adler,** and my address is **11976 Wilderness Drive, Anchorage, AK 99516.** I am a minerals consultant (mining engineer) and am employed by ON-LINE EXPLORATION SERVICES, INC.; a family owned Alaskan consulting firm. For the past ten years, I have been active in the exploration and development of mineral resources in the state of Alaska. The following are my personal observations and comments:

In the recent past, Alaska has seen an increase in mining development with the Red Dog operation slated for production in 1990, Greens Creek in a month or so, the Bima dredge at Nome, and the Valdez Creek Mine, to list the new operations. None of these projects are operating on lands effected by this legislation and aside from a few small placer mines, the only major producer on state lands at this time, to my knowledge, is the Grant Mine outside of Fairbanks; although considerable exploration is currently being conducted.

The state of Alaska has entitlement to 104 million acres and the Division of Mining has reported that some 90% of this land is open to mineral location. Lands that can provide wealth and jobs to the citizens of Alaska as the state constitution provides.

Most of you on this committee have been involved and have followed the developments at Red Dog and Greens Creek over the past three years. The increase in jobs because of these operations have provided positive impacts to the Kotzebue and Juneau areas. The returns to the state from these operations come from many areas including, payroll taxes, corporate income taxes, projected mining license taxes, and the reduction of social services to a region. A few more of these operations in other depressed portions of Alaska is what is needed to help diversify and stabilize our current economy.

In 1982, the Alaska Department of Commerce and Economic Development compared Alaska's mineral taxation with eleven other mineral producing states. The comparison did not take into account the higher costs of doing business in Alaska. These additional costs are due in part to the colder climate, remote location, higher wages, and the lack of infrastructure. Without the higher costs of doing business in Alaska, the report indicated the Alaska mineral tax burden is average when compared with the eleven other mineral producing states.

mineral tax burden is average when compared with the eleven other mineral producing states.

In reviewing this legislation there are three areas that can be measured as having a direct impact on the mining industry. First, the direct costs to locate a mineral claim will go up son 10% at a minimum through the rental costs being based on an advance payment basis; Second, the rental fees raises the yearly maintenance fee on mineral claims for the miner; and third, the 3% royalty on net income is truly and additional tax.

The special tax currently levied on the mining industry, the mining license tax, already is an extra tax above what most other industries must pay in Alaska. It is not paid in lieu of corporate income tax, property tax, unemployment tax and other state and local taxes; it is paid in addition to these already significant taxes. The current corporate income tax alone in Alaska is higher than for nearly all states that has mining as an economic base. The current rate of special taxation (essentially 7% of net income for larger operations) is high. To add another 3% to this as is proposed by this legislation is to have a total tax of 10% on net income for the right to work on state lands.

At this time, Alaska is experiencing a resurgence on not only the projects discussed previously, but also in mineral exploration and property developments. In Juneau alone, you are seeing the A-J Mine and the Kensington Mine developments along with other properties moving ahead.

The state of Alaska's Alaska Mineral Industry Report for 1988 has yet to be published but a good guess is that the dollars expended by this segment of the industry will more than double that of 1987. A good sign that the industry as a whole is beginning to believe in the state of Alaska for investment.

These exploration and development expenditures alone, represent a lot of jobs and economic benefits for Alaskan's. Also, this exploration effort locates new mines like the Greens Creek and Red Dogs that add even more benefits to Alaskans.

The length of time for a mineral deposit to go from exploration to development typically is longer than ten years and will often exceed twenty years. The Greens Creek deposit was initially discovered in the early 1970's and is just now reaching the productions stage. During exploration only a small percentage of lands are actually disturbed.

The impression I perceive from earlier testimony is that the miners are using all of the lands covered by their mining claims. While the mining claim reserves the miners right to develop their mineral discovery, these lands are still available for public use. Forestry, hunting, fishing, trapping, and recreational uses come

immediately to mind. This is a multiple use concept that the mining industry has always endorsed. These uses are often extended through the mining phase of a deposit. An underground mine uses only a small percentage of the surface lands for operational infrastructure. For example, the Homestake mine at Lead, South Dakota has operated for over 100 years supporting the economic base of the surrounding communities while these communities have expanded around the mine.

In summary, this legislation needs to provide a clear answer to the courts mandate with out placing additional burdensome taxation on the industry. In effect, SB129/HB99 would place Alaska above average in terms of total taxation if the state report is the base of comparison. If a mining industry is desired for Alaska, caution is given in developing rents and royalties that are too high.

I thank you for providing me the opportunity to give these comments on this legislation.

Kevin P. Adler

RECEIVED FEB 0 8 1989

Alaska Environmental Lobby, Inc.

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

Representative Bill Hudson
P.O. Box V
Juneau Alaska 99811

7 February, 1989

Dear Representative Hudson-

I was not well prepared to answer your questions concerning reclamation during my testimony at the House Resources Committee hearing Friday, February 2. I would like to take this opportunity to respond with more detail here.

What will have to be done to effectively reclaim land? Topsoil must be returned to promote vegetation, settling ponds drained, stream channels reestablished to allow unobstructed flow, and equipment and debris removed from mining sites. Many miners fail to mix leftover coarse with leftover fine materials, though this practice would go a long way in speeding up soil formation. A number of different kinds of petroleum products are used in mining operations and any spills or leakage of these should be cleaned up; likewise for any other solid or liquid wastes.

Many miners have already proven that they can successfully and affordably reclaim mining lands. Some have developed operations that use 100% recycled water, while others have developed methods that use only a scant amount of water. Such practices must be recognized and encouraged. But statutory reclamation language is still needed to guarantee that the land will retain its multiple use capacity after mining is complete.

For more specific information on how mining operations have significantly effected stream and land-use quality I would refer you to a draft report on nonpoint source pollution prepared by ADF&G for DEC. I have enclosed a copy of the executive summary of that report.

I have enjoyed working with the Resource Committee on this issue, but regret that my month as a volunteer lobbyist is over and I will be going home soon. I hope that all the groups involved may continue the dialog begun in the teleconference hearings and that such dialog will ultimately result in a rent, royalty, and reclamation program acceptable and affordable to all.

Sincerely,

Claire Holland

Volunteer Lobbyist
Home address: P.O. Box 53
Delta, AK 99737

cc: House Resource Comm.
Members

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SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER • SOUTHEAST ALASKA CONSERVATION COUNCIL
KNIK KANOERS AND KAYAKERS

From: "Nonpoint-Source Pollution Related to Placer Mining: Impacts, Existing Management, Data Gaps, and Recommendations"
Prepared for the Department of Environmental Conservation by ADF&G, 12/88

EXECUTIVE SUMMARY

This report has been prepared by the Alaska Department of Fish and Game under a Reimbursable Services Agreement with the Alaska Department of Environmental Conservation as part of the latter department's efforts to develop a management plan for controlling nonpoint-source pollution in Alaska as mandated by recent (1987) amendments to the Clean Water Act (Section 319). The Act requires the states to submit their plans, including implementation schedules, to the Environmental Protection Agency for approval. Placer mining is one of the major categories of nonpoint-source pollution to be addressed by Alaska's management plan.

Placer mining has affected water quality on more than 3,000 kilometers of Alaska's streams and rivers to the extent that they are not supporting designated uses (ADEC 1986a). The effects of mining on water quality and fish and wildlife resources are caused by waterborne particulates and trace elements (metals) contained in mine effluent. These substances modify aquatic physical environments, reduce productivity of aquatic communities, and reduce or eliminate aquatic species through a variety of mechanisms. Waterborne particulates, and perhaps trace elements, are generated by nonpoint sources as well as point sources related to placer mining.

Point sources are defined in the federal Clean Water Act (33 U.S.C. 1251 et seq.) to include "any discernible, confined and discrete conveyance, . . . from which pollutants are or may be discharged." Nonpoint sources comprise the remaining pollutant discharges, usually area-wide or plant-site runoff and often associated with stormwater discharges. Placer mines normally discharge process water and thus are regulated as point sources. In addition, placer mining often produces expanses of highly disturbed terrain and highly altered stream channels that, if not properly rehabilitated, constitute nonpoint sources of pollution, which may persist for periods in excess of 20 years (Singleton et al. 1978).

Four categories of nonpoint-source pollution are related to placer mining in decreasing order of importance: erosion of abandoned settling ponds, overburden piles, and fine tailings by stream flow; resuspension of point-source deposits; erosion of destabilized stream channels; and surface runoff from disturbed terrain. Storms and consequent high flows increase the magnitude of these sources. Mining-related nonpoint sources are difficult to manage because they occupy large areas, are diffuse in nature, and no person or entity is necessarily responsible for implementing controls on a given site.

Federal programs for managing mining-related pollution include the Clean Water Act (National Pollutant Discharge Elimination System - NPDES - permits and Section 319 nonpoint-source management plans), Bureau of Land Management regulations governing surface management and mine reclamation, U.S. Army Corps of Engineers Section 404 permits (dredge and fill) for mining in wetlands, U.S. Forest Service requirements for compliance with forest management plans, and National Park Service regulations governing mining and mine reclamation within the National Park System. State programs for managing mining-related pollution include the Alaska Water Quality Standards administered by the Department of Environmental Conservation, fish habitat permits issued by the Department of Fish and Game, Department of Natural Resources regulations governing miscellaneous land use and leaseholds, Department of Environmental Conservation certification

Department of Environmental Conservation; (2) revise existing Department of Environmental Conservation regulations to cover nonpoint sources related to mining; and (3) strengthen NPDES, Section 404, Department of Fish and Game, and Department of Natural Resources permits for controlling nonpoint-source pollution.

In terms of procedural mechanisms and management practices, we recommend that state agencies take the following actions to control mining-related nonpoint sources: (1) implement improved point-source controls to eliminate resuspension of point-source deposits as a source of nonpoint pollution, (2) emphasize rehabilitation of stream channels and floodplains as the primary nonpoint-source control, and (3) provide improved field enforcement of permit requirements. These actions are important and should be pursued independently of other recommendations in this report.

TELECOPY COVER SHEET

Fairbanks Legislative Information Office

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TO: Jnu FAX: PHONE:

FROM: Roger Burggraf PHONE:

INSTRUCTIONS: For Senate + House Resources: Written Testimony

Senators: Fahrenkamp, Kerttula, Eliason, Frank, Halford, Sturgulewski, Zharoff

Reps: Davidson, Menard, Jacko, M. Davis, Foster, Navarre, Furnace, Hudson, Sharp

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SENT BY: Annie

TESTIMONY 6-I SENATE RESOURCES COMMITTEE - SB-129
January 30, 1989

STATE HOUSE RESOURCES COMMITTEE-HB 99
February 3, 1989

Mr. and Madam Chairpersons:

I appreciate the opportunity to testify on the above bill today. I am Roger C. Burggraf, Mine property owner, mining consultant and miner, 830 Sheep Creek Rd., Fairbanks, AK 99709

1. I agree with the comments submitted by Earl Beistline, Chairman of the Minerals Commission.
2. Paul Glavinovich representing the Alaska Miners Associates, Inc.
3. Kevin Adler

SENATE BILL 129 and HB 9 represent a good stab at trying to work up legislation to resolve the court mandated decision. We in the industry have appreciated the opportunity to give input to the Division of Mining in its effort to develop legislation.

The basic approach taken by HB 99 has merit, but there are areas in the bill that I, as a mine property owner, and mining consultant disagree with.

The state's approach in the bill will tend to discourage mineral development on state land rather than encourage exploration and development on properties which will lead to production.

The point that the environmental community knows full well and the administration has not taken into consideration is that economics will dictate when a mine will go into production. The high rental rates and high royalties, combined with the existing mining license tax, will stop mining on state lands dead in its tracks if HB 99 is approved in its existing form. Some world class mines located on state land might be able

to operate under the high rentals and royalties proposed. Not all are world class mines, but can be productive, extracting minerals, providing needed jobs, taxes for the borough, the state and nation. Mining is a labor intensive industry which provides resources and jobs benefiting society. The margin of profit in the mining industry cannot be compared to the petroleum industry, and should not be.

Senator Fahrenkamp made the right observation when she was quoted in a Fairbanks Daily News-Miner editorial recently. She said that too high a rents and royalties will force mining companies who have state mining claim holdings to drop them and look elsewhere in Alaska on Federal or Native lands.

The bill, the way it is now, is a disincentive for developing state mining lands. If you want to stop mining on state lands, SB 129/HB 99 in its present form will do so. The 6-I court decision has given the state an opportunity to send the right signals to the world and its people that it favors mineral development. The 6-I issue is not one of the state demanding maximum revenues or adding on a whole Christmas tree of new rules and regulations which further discourage the development of our resources on state lands. The court ruled that the state did not have a leasing system in place. It did not say how much should be charged for rents or royalties or say that reclamation should be included in any legislation proposed to comply with the directives of the court.

The rental rates are too high as proposed. The escalating rents as proposed take monies that would be better invested in exploration and development on state lands. The state should be doing things to encourage mining on its lands so that its people can have jobs.

The royalty provisions penalize the mine operator for trying to develop a mine. A new mine operation that employs people and has high capital costs resulting in low profitability will be forced to pay royalties based on gross income. The clause could cause existing mines to close down and stop new mines from going into production. Is the state's policy to maximize revenues to support its bureaucracy or to encourage the development of private industry that puts people to work and produces wealth?

A small mom and pop operation may be able to make it for a few years on 40 acres, but any operation must have sufficient reserves, acreage, and claim blocks in the same area to justify the investment of equipment to operate. The cost to move an operation, which includes logistics and permitting, is high and contributes to instability.

Larger companies will not move into an area unless there is a sufficient land position to justify an investment of time, money and labor to develop a mine.

Fairbanks has a potential of 3 or 4 large mining ventures. The Grant Mine operation would not have developed if they had not been able to pull a large block of claims together. If the land position had been split up, no development would have occurred.

Cleary Hill, Pedro Dome, Gilmore Dome, the Scrafford Mine off the old Murphy Dome Rd., all have a potential. The development of these areas for hard rock is contingent upon large blocks of land being made available for consolidation by a larger company if the opportunities appear right. High rents will discourage claim blocks from being maintained and will further hinder the larger companies from pulling claim blocks together to develop mines.

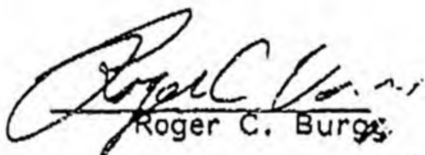
If the intent of this bill is to stop mining on state lands and put existing mining operations out of business, then I recommend you approve SB 129/HB99 as written.

Recommendations:

1. MINING LICENSE TAX: This should stay in place. It provides revenues from Federal, private and Native lands.
2. RENTS: These should be scaled down and not escalated to encourage investment in development of property.
3. ROYALTIES: The royalty on gross revenues should be deleted.
4. 6-I: This should not apply to lands which were not mineral in character at the time of selection, as directed by the court decision, and should only address the 6-I issue, which is the state's failure to have a leasing system in effect.

I realize that legislation needs to be passed. We want reasonable rents or royalties. You can act and fulfill the court decision. You do not have enact confiscatory legislation. If you do, it will deny the orderly d t of Alaska's mineral resources.

or loses if SB 129/HB99 is enacted as is? The environmentalists miners lose, and the state, its people and the nation will lose, an ded jobs in the State of Alaska will be lost.



Roger C. Burggraf

1-30-89

Date

Feb. 2, 1989

House Resource Committee
Pouch V Juneau

Re: HB-99

Mr Chairman/ Resource Committee,

After waiting two days in the LAO office to testify on this bill it became apparent that time was running out on me again. So was requested by their staff to submit this in writing.

My name is Del Ackels, PO Bx 2151 Fairbanks, Alaska 99707. I would like this read into the record.

There are several points in this bill that I can not support. First I would like to point out that the reason the House and Senate was directed by Federal Court action to prepare this bill was because of the 6I issue. No where in this or the Senate version is 6I even mentioned. This should be corrected.

The State in this action spent a lot of money and time defending what it thought was it's States rights in this issue and in the end won some points and lost some points. In the end the Fed. Courts found that the State did indeed have some lands subject to location but also had some lands subject to 6I which had special qualifications which the court directed the State to identify. The qualification for these special 6I lands were they had to be KNOWN to be mineral in character at time of selection, and such lands were subject to Rents and/or Royalties. The Plaintiffs (Trustees for Alaska) in this case against the State, lost some on both these points. They wanted All lands to be included and both Rents and Royalties paid.

At this point I became a little confused because both these Bill's address the Plaintiffs point of view and not what the State fought so hard for and won in court. Is it because the State cannot identify these lands? Or is it because the State Feels it doesn't have money or time to do this? If this is the case this State may lose a tremendous amount of future revenues over the long run in development spin-offs by pushing this development on to more favorable lands and should reconsider it's position in this Bill. If not the question should be asked, Why did the State fight this in the first place?

Let's now look at what will happen if the Plaintiffs

point of view is taken, as both these bills suggest. Alaska will now have 104 million acres of land that is automatically more expensive to develop then it's adjacent lands. These other lands are Native Lands, Private Lands, and Fed. Lands as you know. If a average size Co. is on these other lands and enjoying a 15% net profit over the long run of 10 years or so, this Co. would be an exception to the rule and above average. If it was subject to 6I fees that were either to high or that would escalate over time, this mine life would be limited if on State land. If this same mine was located on State lands subject to location, the mine life would be the same as other lands and would produce more income to the State over the long haul in taxation and spin offs.

How does this affect me? My wife and I are what you have been hearing as Mom and Pop type of business. We located 200 State mining claims in the Circle area in 1983. In the last 6 years we have put all our savings and what moneys we could save out of our budget to develop this prospect. This prospect has a strong promise to be a large mine in this area which would provide a badly needed income base for this part a Alaska. These claims were not on lands at the time of State selection that were known to be mineral in character. I found this mineral discovery through hard persistent work on lands open to location that were not subject to sales, grants, deeds, or patents.

Since H.B. 99 or S.B. 129 assumes there are for some reason no longer any location lands on State lands, where does this leave my wife and myself? Come this fall we will be assessed over $4,000.00 that we don't have (if we did we would have put it into more exploration) and will most likely have to let this deposit drop from lack of funds. This would be a tremendous let down for us. Even if we could come up with this rent money there is no where in either one of these bills a provision that even would suggest once productions begins the rent would be dropped. One sad thing for us in this bill is there is already enough information known about our deposit that when we are force to drop it, a larger out of State Co. would be there to grab it. This would be a bitter blow to us.

I believe it is important that when you folks are forced to make a rushed, major decision such as this, that care be taken to view the overall picture. 6I should apply only to those State lands that qualified, that rents or royalties be charged. I know that extra moneys are hard to come by for you to spend in Juneau, but you have to keep in mind that 81% of all Federal Lands in this State are forever closed to mineral development, and this State will never develop revenues from. 17% of State lands are now closed to

mineral development, and what this State ended up with after ANLCA as far as mineral selection, is considered by your own departments (DNR and DDGS) as "DOG MEAT".

So it is important that you don't hinder what is left for a buck. That when you do put this in statute, it is as good as you can achieve. I would hate to be sitting in your chair when Gas and oil runs out. Right now only 9% of your current revenues would be covered with what is left. Who knows what it would be then? And where would you turn?

As a parting note, I saw a very appropriate bumper sticker on me way to the LAO office.........

IF DOLLY PARTON WAS AN ALASKA MINER
SHE WOULD BE FLAT BUSTED.

Sincerely,

Del Ackels

cc; Senate Resource Committee

Northern Alaska Environmental Center

218 DRIVEWAY
FAIRBANKS, ALASKA 99701
(907) 452-5021

TESTIMONY OF REX BLAZER, EXECUTIVE DIRECTOR OF THE NORTHERN ALASKA ENVIRONMENTAL CENTER, BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE
FEBRUARY 2,1989.

The State Supreme Court has determined that the State must collect rents and royalties from mining claims on State land under Section 6(i) of the Alaska Statehood Act. The U.S. Solicitor General has recommended that these lease payments apply to all State lands, not only those found to be mineral in character at the time of statehood. The opinion further held that the Federal Courts, rather than the State Court, had the ultimate jurisdiction over the issue. Rents discourage speculation and encourage efficient use of public resources. Royalties pay the people of the State for the extraction of non-renewable resources, as is done with coal, oil, and gas.

The legislature must determine how this is to be done. There is a possibility that mining on State lands for the 1989 season might be severely curtailed if adequate legislation does not pass this session. The State Division of Mining under Gerald Gallagher prepared these bills which were introduced by the Rules Committees for the Governor.

The legislation applies to all state lands and charges annual rents on a sliding scale from $ .50 per acre

($20.00/claim) for the first five years to $5.00 per acre ($200.00/claim) after twenty-one years. Production Royalties will be assessed as a sliding scale percentage of net income or a minimum royalty based on gross income, whichever is higher. The state gives a big break to the miners in that the
annual labor requirement will be reduced from $200.00 to $100.00.

The major positive aspects of this bill are that the state will apply both rents and royalties to all state lands. Furthermore, revenues would help defray the cumulative costs to the state of regulating this industry. The negative aspects are that the bill does not go far enough. The bill does not insure an adequate basis for the condition in which state lands will be returned to the people of the state - hence no basis of foregone uses from which to calculate fair royalty.

The Northern Alaska Environmental Center opposes this bill as it is written and strongly supports the following amendments.

Reclamation -

The State is currently the only public land manager in Alaska that does not require reclamation on its lands. Miners on state land should not be exempt from requirements that apply to all other miners. For the State to truly put the 6(i) issue to rest, reclamation, which is inextricably linked rents and royalties, must be resolved as part of the bill.

Single use by mining without reclamation destroys the value of the land for other uses and users. When the State gives away non-renewable resources and foregoes other resource values in return for royalties and commits land held in the public trust to a single use, statutory reclamation requirements will guarantee that the land will retain its multiple use capacity after mining is complete and royalties paid. There will be no real, clear basis upon which to base royalties unless there is a reclamation standard to assure the public of the condition of the land subsequent to mining. An acceptable bill must, therefore at the minimum, (1) require reclamation; and (2) direct DNR to develop adequate reclamation standards and regulations.

Rents and Royalties -

We feel that for the public as well as the Natural Resources Committees of both the Senate and the House to make an informed decision on rent and royalty structures, the state Division of Mining (D.O.M.) should produce sufficient

information on the basis and implications of the numbers in the current version of the state bill.

Where, for instance, did the $ .50 minimum rent figure come from? What basis does the state have to make the determination that this figure is any thing other than nominal? - particularly in light of the fact that under this legislation all miners will receive a $100.00 break on their annual labor requirement? Will the state lose money on this aspect of the proposal?

The majority of miners on state land hold less than ten claims. For rents to achieve their purpose - that of discouraging speculation and promoting timely production - the state should direct its efforts toward this majority by raising the minimum rental to a leval commensurate with that goal. Mariculture sites average 5 times the states proposed minimum rent. In light of the fact that other western states average far higher than the current state proposal, we recommend $1.50 per acre ($60.00/claim) with a $200.00 minimum. This scale would slide to $2.50 and $5.00 as in the state proposal.

At bottom, however, we need information from the D.O.M to compare and legitimize these sorts of different scenarios.

Likewise we feel there is insufficient information upon which

to base an informed decision on the states royalty recommendation. All royalties should be based on gross, rather than net figures. We support the premise that royalties based on gross figures result in increased business efficiency while those based on net figures tend to do just the opposite. The ridiculously low figures in the state bill are rendered almost totally nominal by the fact that these royalties can be written off against the Mining License Tax.

The Court was not joking when it mandated royalties in its decision. The statethere fore should set realistic royalty figures upwards of five to eight percent on a gross basis in order to put this matter to rest.

Once again, there can be no real basis for royalties without reclamation.

We feel strongly that a decision on these royalty numbers cannot be made until D.O.M. can provide the committee and the public with more information. Again, what kinds of "exemptions" will constitute the difference between a net versus gross royalty basis? Will miners be able to write off losses on one claim against others? I am told that in 1987 out of 572 permits issued, only 87 tax returns were filed. What kinds of reporting problems have the Department of

Revenue and D.O.M. had with the mining community and how do these very real problems factor into the equation? What Royalties are charged other extractive industries in our state?, in other states?

Lastly we are still unsure of the loophole accorded off-shore operations under AS 38.05.250 and feel the D.O.M owes the public a fuller explanation in terms of the foregone revenues of this aspect of the equation.

Thank you for this opportunity to testify.

House Bill 99
& Bill
Testimony: Terry Burnell

PO Box 8
Anchorage,
99510

We should have a severance tax if royalty payments are considered and function the same as a severance tax. I support royalty payments. We must spread the income base of our natural resources over a larger base. We will not always be fortunate, as you know, to have such a large income from oil. I don't believe this bill will cause, by charging rent, a resource will not be turned over to foreign powers any more than now there is an ability to bring in foreign capital all over the United States and all over the world to finance & own mining interests.

As to Section 1. C I would like to suggest an initial 20 year period followed by a possible 10 year period to adjust rental rate. Also a mining lease shall be for any period up to 50 years.

By charging rent, this will move non-productive miners off the land. Some miners sit on claims for various reasons, other than to mine, they want to control the land for some reason or other. This would free the land from non producers so that the claims can be released and productive. It's necessary to have royalty and rent both, not either/or. We need to spread our income base for the State.

Thank you.

Trustees for ALASKA

TESTIMONY OF RANDALL M. WEINER
EXECUTIVE DIRECTOR OF TRUSTEES FOR ALASKA

BEFORE THE HOUSE RESOURCES COMMITTEE

ON LEGISLATION PROVIDING FOR RENT AND ROYALTY PAYMENTS FOR MINING CLAIMS, LEASEHOLD LOCATIONS, OR MINING LEASES.

HOUSE BILL No. 99

FEBRUARY 2, 1989 3:30pm

I. Introduction.

Trustees for Alaska commends the state for moving responsibly in drafting legislation required by court order in a case which was brought by Trustees for Alaska, Nunam Kitlutsisti, Dinyea Corporation, Village of Minto, Alaska Independent Fishermen's Marketing Association, Alaska Center for the Environment, Southeast Alaska Conservation Council, and Friends of the Earth. After three years, the courts ultimately ruled that a system which permits the extraction of hard-rock minerals while failing to collect rents and royalties therefrom violates Section 6(i) of the Alaska Statehood Act.

The legislation now being considered is appropriate because it requires that rents and royalties will be paid for a mining claim, leasehold location, or mining lease on all state lands. As I will be discussing, this will protect the state from needless litigation with the parties in the original lawsuit and remove the potential for the forfeiture of state lands by the federal government.

It is insufficient, however, because it fails to include a provision for reclamation of mining sites when operations have ceased, thereby significantly diminishing the availability of that land for other purposes in a state whose Constitution and Supreme Court require common use of the state's natural resources. Moreover, it exempts too much state land from its provisions, since miners say that only land chosen under the Alaska Statehood Act should be subject to rents and royalties. Offshore operations, like the profitable one near Nome, would be exempt. But why does the manner in which our land was acquired have anything to do with the return to which we citizens are entitled? Such an exemption makes no sense.

725 Christensen Drive, Suite 4 Anchorage, Alaska 99501 (907) 276-4244

Rents paid under the bill are also too low, starting at 50 cents an acre per year which equates to only $20 per mining claim. One dollar per acre would bring this law more into line with other states. Finally, the royalty payments are based on net income, and numerous loopholes could be used to lower revenue to the state. Payments based on gross income would be much more fair. And frankly, citizens are entitled to a return on their mineral wealth regardless of whether the operation is efficient or "profitable."

II. Reasons for Lawsuit.

The so-called "6(i) lawsuit" was originally brought to assure that the State of Alaska would not continue to hemorrhage away revenues under an improper leasing system for gold, silver and other hardrock minerals. It was clear to the unprecedented and diverse coalition of environmental, fishing and Native rights groups and villages that a mineral leasing system in Alaska must be fair to all interested parties -- the miners, the other concurrent and future users of the land and water affected by the mining operations, and the citizens of Alaska whose resources are being acquired by a select few.

Those plaintiffs insisted that the State meet the conditions under which it was granted statehood. Section 6(i) expressly enabled the State to obtain title to mineral lands it selected after statehood, but prohibited the disposal of such land except under lease. The purpose of this leasing requirement was to enable the State to derive revenues from its mineral lands on a long-term basis, since many in Congress were concerned that the State could ill afford the costs of statehood. Assuring the State an adequate source of revenue went a long way towards alleviating Congressional concern and guaranteeing that Alaska would become the nation's 49th State.

The Supreme Court of Alaska agreed with the environmental, fishing, Native rights groups and villages, and as a result, the case was remanded to Judge Douglas Serdahely in the Superior Court who declared that the state's present mineral extraction system "violates Section 6(i) of the Alaska Statehood Act because it does not require the payment of rents or royalties from state lands."

III. Injunction.

On remand, the plaintiffs asked the Superior Court to enjoin the State from allowing the extraction of any mineral deposits from state lands after May 15, 1988 if a leasing system conforming to the Supreme Court's interpretation of Section 6(i) had not been adopted. The Superior Court decided that the issuance of such an injunction would be premature until the Alaska Legislature had been

given the opportunity to enact an appropriate leasing system during the next (this) legislative session. As Judge Serdahely wrote, "The Court thus declines to issue any injunctive relief in connection with the instant declaratory judgment. Should the State and/or Legislature fail to adopt an appropriate leading system by the time the next mining season is about to commence, any party is free to return to this Court with a proper application for injunctive relief at such time." The Superior Court could not be clearer; the Legislature must enact this legislation in this session.

IV. Federal Enforcement.

There are other compelling reasons why this legislation must be enacted. When some of the parties to the lawsuit were seeking a hearing before the U.S. Supreme Court, the U.S. Solicitor General, the third highest ranking law enforcement officer in the country, analyzed Section 6(i) of the Statehood Act and submitted a brief on behalf of the United States. He pointed out that because the issues primarily involved an interpretation of a federal law -- the Alaska Statehood Act -- any party was free to relitigate the issue in federal court. As stated by the Solicitor General in his brief, "[i]n any future suit in federal court -- including a forfeiture action brought by the Attorney General of the United States -- both petitioners and respondents presumably would be free to relitigate the issues of federal law that were addressed by the Alaska Supreme Court in this case, since the district court in any such suit could not accept a proceeding in state court that did not constitute a case or controversy 'as the basis for conclusive disposition of an issue of federal law' (citation omitted)." [Solicitor General brief at 17.]

Thus, if the Legislature doesn't act, parties may seek an interpretation of Section 6(i) in federal court. Moreover, the environmental, fishing, and Native rights groups and villages know that in federal court the Solicitor General, representing the U.S. Government, will likely continue to disapprove of the current mineral leasing system and continue to disapprove of any new leasing system that does not apply to all state lands. [Solicitor General brief at 28.]

Not only can a party seek and injunction in state court or relitigate these issues in federal court if not adequately resolved by the Legislature, but the Solicitor General alluded to his ultimate authority to seek a forfeiture of state land as provided for in Section 6(i). As he states, "Nor does private litigation -- and especially a declaratory judgment action -- interfere with the Attorney General's enforcement authority under Section 6(i)... Forfeiture under Section 6(i) obviously was intended as an ultimate sanction to protect the interests of the United States if the restrictions it imposed are violated; respondents, by contrast, [meaning the environmental, fishing, and Native rights groups and

villages] seek to prevent a violation of those restrictions from occurring and thereby to avoid any occasion for forfeiture, so that the land may be preserved for the State and its citizens, as Congress intended." [Solicitor General brief at 23.]

Injunctive relief, federal enforcement, and forfeiture. These are strong incentives for this Legislature to act. But it must nonetheless act correctly. Since it is clear in court decisions and the opinion of the Solicitor General that Section 6(i) was intended to provide Alaska with sufficient compensation for its mineral resources, the amount charged cannot be too low. It cannot provide only nominal revenue. Although the rents needn't reflect fair market value for the minerals, they should reflect a reasonable rate sufficient to compensate Alaska's citizens for the loss of resources that are their heritage. And doesn't that make sense in this current economy? Other speakers will address whether the rents suggested are too low, and whether a royalty fee relying in large part on "net" income provides too many opportunities for liberal deductions and fails to provide Alaska and Alaska's citizens with an adequate return.

V. <u>Reclamation</u>.

But by far the most serious deficiency in this legislation is its failure, so far, to include a provision requiring the reclamation of land when mining operations have terminated. Reclamation has become the accepted procedure across the nation for the past few decades. Federal law requires that every coal mine operation be restored so that the land affected is capable of supporting the uses it was capable of supporting prior to any mining, or higher or better uses of which there is a reasonable likelihood. What applies to coal mines should applies equally to other operations, especially in a state that constitutionally requires that leases be "subject to reasonable concurrent use" [Art. VIII, Sec. 8], that its forests, wildlife, grasslands, and other replenishable resources be managed on a sustained yield basis [Art. VIII, Sec. 4], and that legislation governing development and conservation of natural resources provide for the maximum benefit of its people [Art. VIII, Sec. 2].

Reclamation is the only way to apply a multiple and common use framework to development of Alaska's resources. Reclamation is not only constitutionally supported, it's not only fair, but recent Supreme Court cases suggest that the common use concept is expanding. In the recent case of <u>Owsichek v. Alaska</u>, ruling on the constitutionality of exclusive guiding areas, the Supreme Court held that the common use provision of the State Constitution strongly protected public access to natural resources. This case is rapidly becoming a landmark case. It noted the importance of the common use clause of the Alaska Constitution, and, citing the Alaska Constitutional Convention Papers, it pointed out that the term "for common use" implies that resources are not to be subject to

exclusive grants or special privilege.

Without reclamation, there can be no common use. The environmental, fishing and Native rights groups and villages who brought the 6(i) lawsuit know that reclamation is the only way that they will get their own opportunity to utilize the resources after the mining operations are terminated. Common use would be an empty term if there is no guarantee that topsoil will be returned to promote natural revegetation, that settling ponds will be drained, that stream channels will be reestablished to allow unobstructed flow, and that equipment and debris will be removed from the mine site when operations have terminated. Reclamation allows for different interests to co-exist in this State, and provides for the common, and efficient, use of resources.

The reclamation requirement will not present a hardship to miners. Many of them already reclaim their sites when operations have concluded, and mining representatives suggest that most miners could comply with reasonable reclamation requirements without difficulty. Indeed, the mining industry has modernized, and most miners are becoming more responsible in their use of settling ponds, recirculation of waste water, and reclamation.

VI. Conclusion.

Thus, to conclude, the Legislature should only pass this rent and royalty legislation after the serious deficiencies are resolved. The starting rents should be increased, the royalty payments should be based on net income, and all lands should be covered by its provisions. The 6(i) lawsuit, the Alaska Constitution, the unappealing prospect of federal enforcement and forfeiture actions, and the evolving common use doctrine, all compel this Legislature to move forcefully in passing an appropriate bill that, in the end, will bring Alaska much needed revenue while ensuring the wise management of its resources for all its citizens.

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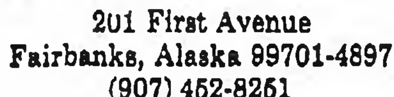
Tanana C' 'fs Conference, Inc.


201 First Avenue
Fairbanks, Alaska 99701-4897
(907) 452-8251

February 13, 1989

Members of the House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Members of the House Resources Committee:

The Tanana Chiefs Conference, Inc. represents villages affected by the implementation of Section 6(i) of the Alaska Statehood Act. At this time we would like to reiterate concerns expressed by our village people about this issue:

- Above all, it is an appropriate time to make a clean and simple mandate to reclaim land used for mining to restore the multiple use values of the land. The leasing procedures cannot be complete without a clear mandate for this critical element.

- Both rents and royalties should apply to all state lands for equitable and expedient processing of the mining leases.

- The rents and royalties should be high enough to satisfy the concerns of the State Supreme Court as well as to satisfy the public interest. A realistic royalty based on gross revenues rather than net revenues would better satisfy the public interest.

Enclosed is a letter generated by a variety of interests to Governor Cowper last summer for your information. We appreciate your attention to our concerns.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

Will Mayo

Mitch Demientieff
President acting

LJ:af

289-113.1

Rural Alaska Community Action Program, Inc.

August 16, 1988

Governor Steve Cowper
State of Alaska
P.O. Box A
Juneau, AK 99811-0101

Dear Governor Cowper:

As you know, last year the Alaska Supreme Court held that section 6(i) of the Alaska Statehood Act requires the State to lease all of its "mineral lands." The State currently is out of compliance with this ruling. We understand that your Administration is now in the process of preparing a proposal on how to implement section 6(i). Because this issue is of such importance to the undersigned organizations, we are writing you now to let you know our basic position.

Basically, we believe that implementation of section 6(i) should be guided by the following three principles:

1. The leasing requirement should apply to all state lands, not just those which were known to be mineral in character at the time they were selected by the State. The federal government told the U.S. Supreme Court that it believed that the Alaska court interpreted the law too restrictively in this respect and that all state lands should be leased. In addition, it will be very difficult and time-consuming to figure out what the State knew about its lands when it selected them, which will only delay things still further. And of course, the more land that is covered by leasing, the more money the State will make.

2. The State should charge both rents and royalties. Again, the whole idea is to maximize revenue. To charge both rents and royalties also will avoid any future problems with the federal government. This is important, because the federal government can take lands back from the State if the State uses those lands in violation of section 6(i).

3. This is an excellent opportunity for the State to require that miners reclaim their land, and mine in an environmentally responsible manner. Right now, there is no explicit reclamation requirement on state lands; there ought to be one. The legislation implementing section 6(i) should contain provisions requiring state review of mining operations and reclamation.

Administration • P.O. Box 200908, Anchorage, Alaska 99520 • (907) 279-2511, FAX (907) 279-6343

We realize that the last point might be controversial. It nonetheless is very important. At present, the State is the only public land manager in Alaska that does not require reclamation on its lands. Yet unreclaimed lands are a major source of pollution, for they erode easily and hence cause considerable sedimentation in streams. This both pollutes the water and destroys fish and wildlife habitat. In addition, these lands formerly provided good habitat for moose and other wildlife.

There is no good reason why miners on state land should be exempt from requirements that apply to all other miners -- indeed, it is unfair to those other miners if reclamation is not required of miners on state land. Reclamation therefore is an integral part of any implementation of section 6(i). Of course, it also is a very complicated issue. Accordingly, we suggest that any legislation simply require reclamation, and provide that you appoint a committee (composed of state officials, miners, and downstream users) to prepare a proposal, within one year, to flesh out precisely what must be done.

Thank you for your attention to this matter.

Sincerely,

Jeanine Kennedy, Executive Director
Rural Alaska Community Action Program, Inc.

Mitch Demientieff, President
Tanana Chiefs Conference, Inc.

Joe Chimegalrea
Nunam Kitlutsisti

for Henry Mitchell, Executive Director
Bering Sea Fishermen's Assn.

Patti J. Saunders
Trustees for Alaska

Rex Blazer
Northern Alaska Environmental Center

Stephanie Kessler, Executive Director
Alaska Center for the Environment

cc: Commissioner Brady, DNR
Commissioner Collinsworth, ADF&G
Commissioner Kelso, DEC
Senator Johne Binkley
Rep. Kay Wallis
Rep. Lyman Hoffman
Rep. Mike Davis
Rep. Mark Boyer
Rep. Niilo Koponen
Rep. Heinrich Springer
Rep. Adelheid Herrmann
Rep. Steve Frank

NATIVE AMERICAN RIGHTS FUND
310 "K" Street, Suite 708
Anchorage, Alaska 99501
(907) 276-0680
(907) 276-2466 (FAX #)

4945

TELECOPIER COVER SHEET

DATE: 2/13/89 COVER SHEET + 2 PAGES

ATTENTION: Legislative House - Resources

FIRM:

CITY: Juneau

FROM: Anna Phillip
NATIVE AMERICAN RIGHTS FUND

RE:

If you do not receive all the pages, please call back as soon as possible.

Telephone No. (907) 276-0680

Telecopier operator: Martina

NOTES:

TO: House Resources Committee; Mr. Davidson, Mr. Menard, Mr. Davis, Mr. Hudson, Mr. Sharp, Mr. Foster, Mr. Navarre and Mr. Furnace

FROM: Anna Phillip
P. O. Box 1312
Bethel, Alaska 99559

I feel that I am being cheated or left out. All land should be used equally by miners and people that depend on the land to survive. Once the miners mine and turn the land upside down, we have no use for it. The land that once was abundant and resourceful is unfruitful and bare. It makes us live a more difficult life. We travel to further places to meet our needs. The miners on the other hand have gathered whatever they need and are living comfortably.

I request the Alaska legislatures to add reclamation to SB 129 and HB 99, so the miners will reclaim the land for other land users to use in the future. I am asking on behalf of all the people who depend on the land a small favor that is very important to us. We do not want to feel that we are being cheated or left out. Accept our request as you accept the other requests. We also ask that offshore land be added, rents and royalties be increased and royalties be based solely upon gross income.

cc: Mr. Hoffman
Ms. Wallis
Mr. Binkley

TO: Senate Resources Committee; Ms. Fahrenkamp, Mr. Kerttula, Mr. Eliason, Mr. Frank, Mr. Halford, Ms. Sturgulewski, Mr. Zharoff

FROM: Anna Phillip
P. O. Box 1312
Bethel, Alaska 99559

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cc: Mr. Binkley

Making Alaska mining pay in a responsible way

For those of you who follow the state legislature, there's one bill in Juneau that's as close to a sure thing as you can find. It's known as the 6(i) bill, Bill No. 129 in the Senate and No. 99 in the House, and Alaska citizens can only profit by its passage. The bill would provide for rent and royalty payments for mining claims, leasehold locations or mining leases.

It's a bill that Alaska's courts are compelling the legislature to pass this session. If the legislature doesn't act, every mining operation in the state might be shut down until the law passes. As if that isn't bad enough, the federal government might even step in and take the state's mineral lands away if no bill makes it out of Juneau.

How did the state get into such a mess? Well, in a nutshell, state officials were misreading a provision in the Alaska Statehood Act, the law which granted us our statehood over three decades ago. The provision requires the state to collect rents and royalties when it grants mineral leases on state lands. For many years, the state practically gave away its lands for mining operations, until a diverse coalition of environ[illegible], fishing and native [illegible] and villages brought a [illegible]t went all the way up [illegible] U.S. Supreme Court before [illegible] state called it quits.

(Just why the state was wasting all of its money fighting to keep money out of the state's coffers is beyond me, but sometimes logic is sorely lacking in natural resource politics.)

The lawsuit — Trustees for Alaska v. State of Alaska — was brought to assure that the state of Alaska would not hemorrhage away revenues under an improper leasing system for gold, silver and other hardrock minerals. It was clear to the groups that sued that a mineral leasing system in Alaska must be fair to all interested parties — the miners, the other concurrent and future users of the land and water affected by the mining operations, and the citizens of Alaska whose resources are being acquired by a select few.

Anyway, with a court order staring the state in the face, it began to do what it should have done originally, drafting a law requiring miners to pay the state (i.e. the public) a reasonable fee for the right to take away its mineral resources. Since Alaska's hardrock mineral wealth is a sleeping giant (even coal reserves vastly exceed oil and gas reserves), the law put into place today will become much more crucial in the coming decades.

In the past year, there have been informal negotiations between all the interested parties — the miners on one side of the table, the environmentalists, native community and fishermen on the other. One thing became immediately clear. Miners didn't want to have to spend a lot more money, and environmentalists, natives, fishermen and village leaders wanted to see a reclamation provision put into the bill so that the lands and streams damaged by the miners would be returned to a form that would permit other uses after the minerals had been taken out.

And you know what, they're both right! Miners deserve the right to make a living, and the rest of us deserve an environment that continues to be useful for other purposes. Responsible and effective reclamation is the answer.

Reclamation has become common practice among coal miners, and most other miners are beginning to follow the practice. Reclamation requirements, in a sense, are anti-litter ordinances, for they require miners to return the mined sites to the condition in which they found them, rather than leave the land despoiled.

The legislation now being considered by the House and Senate fails to include a provision for reclamation of mining sites when operations have ceased, but the environmental, fishing and native interests are hoping legislators come to their senses and add a reclamation requirement.

The 6(i) bill has other problems. It exempts too much state land from its provisions, since miners say that only land chosen under the Alaska Statehood Act should be subject to rents and royalties. Offshore operations, like the profitable one near Nome, would be exempt. But why does the manner in which our land was acquired have any thing to do with the return to which we citizens are entitled? Such an exemption makes no sense.

Rents paid under the bill are also too low, starting at 50 cents an acre per year which equates to only $20 per mining claim. One dollar per acre would bring this law more into line with other states. Finally, the royalty payments are based on net income, and numerous loopholes could be used to lower revenue to the state. Payments based on gross income would be much more fair. And frankly, citizens are entitled to a return on their mineral wealth regardless of whether the operation is efficient or "profitable."

Without reclamation, there will be some pretty unhappy fishermen, natives and environmentalists. They know that reclamation is the only way that they will get their own opportunity to use the natural resources after the mining operations close down.

And just what will have to be done to effectively reclaim land? Well, most importantly, topsoil must be returned to promote natural revegetation, settling ponds must be drained, stream channels must be reestablished to allow unobstructed flow and equipment and debris must be removed from the mine site when operations have terminated. All this is affordable and must become a part of doing business on our public lands and in our public waters.

Reclamation allows for different interests to co-exist in this state, and provides for the common, and efficient, use of resources for all of Alaska's citizens. And isn't that only fair?

NUNAM KITLUTSISTI

Protectors of the Land, Inc.
P.O. Box 2068 • Bethel, Alaska 99559
907/543-2856

February 13, 1989

To: Chairman Menard & House Resources Committee
RE: 6(i) Legislation
Dear Sirs;

Nunam Kitlutsisti, translated from the Yup'ik language as Protectors of the Land, is a Yup'ik organization dedicated to the maintenance of the subsistence lifestyle through the wise use and protection of natural resources on the Yukon-Kuskokwim Delta. We write to comment on the administration's 6(i) bill concerning rents and royalties on state owned mining lands.

Our biggest problem with the bill is that it does not deal with reclamation. This is a very important issue to the people of our region. The issue was sorely brought to our attention several years ago when careless mining on the Tuluksak River ruined water quality and ~~severely~~ degraded salmon ~~spawning, rearing~~, and migration habitat. Salmon runs plummeted and are still in the stages of recovery. The mining remains a source of continued controversy and litigation that has still not subsided. Reclamation in mines such as these is absolutely necessary to prevent non-point source pollution from degrading our lands and rivers in the years to come.

Like many other people in Alaska, fish are our highest priority. Salmon are the backbone of our subsistence and commercial economies. The people along the Yukon and Kuskokwim rivers utilize salmon more than any other subsistence food source. Our commercial salmon fisheries provide more jobs than any other sector of the economy by a wide margin. It is unfortunate that salmon and mining interests are almost always in direct competition for the same specific water resource, but such is the case. We believe that mining is a legitimate use of the land, but consider it imperative that all mining lands be restored to a condition that will support fish and wildlife resources.

Under the current state regime, reclamation efforts are seriously hampered because they are scattered among DNR, ADF&G, and DEC, and because Alaska statutes do not give them enough authority to handle reclamation effectively. We urge you to amend the present bill to include reclamation. Developing reclamation regulations will be a complicated issue. We recommend that the final legislation simply require reclamation and set the framework for a committee of state officials, miners, fisherman, and other downstream users to be established to handle these matters.

We also feel that Alaskans should receive a fair return on minerals which are taken from our public lands. Thus, the bill should apply to all state lands, INCLUDING those offshore. Additionally, the rents and royalties should be significantly increased. The present rates strike us as very low and not reflective of the benefits received by the miners (particularly the larger operations), the cost to the state of administering the mining program, or the potential threat mining poses to fishermen and other downstream users. Similarly, royalties should be based solely on gross income, because it accords most closely to the amount of minerals actually produced.

As your committee considers this legislation, they must keep in mind the conflicting issues of the miner's "right to mine" vs. "the greatest common good". Historically the balance has been skewed to support only the interests of development and exploitation. The surrounding region reaps the negative impacts with little or no economic benefit or compensation to those who rely on the resources for their very survival. You must remember as well that mining is a relatively short term activity with a destructive potential and benefits only a few. Whereas fisheries, and other dependant wildlife populations, will provide sustenance and economic benefits for generations to come.

Reclamation is an integral and necessary requirement to ensure a higher level of habitat maintenance for the future of our fisheries and wildlife resources. In all fairness and equity it is your duty to see that all possible efforts to protect these affected resources are achieved. The reclamation issue must be addressed and included within this legislation. Our thanks for your just and positive consideration on this matter.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING

☒ P.O. BOX 107016
ANCHORAGE, ALASKA 99510-7016
PHONE: (907) 561-2020

☐ 3700 AIRPORT WAY
FAIRBANKS, ALASKA 99709
PHONE: (907) 451-2790

☐ 400 WILLOUGHBY #400
JUNEAU, ALASKA 99801-1000
PHONE: (907) 465-3400

CERTIFIED MAIL # P 126 771 521
RETURN RECEIPT REQUESTED

February 2, 1989

Martin M. Herzog
14250 Sabine Street
Anchorage, AK 99516

MISCELLANEOUS LAND USE PERMIT
MLUP A896073

The Alaska Department of Natural Resources, Division of Mining, in accordance with and subject to the requirements and general stipulations of Alaska Statute 38.05 (Alaska Land Act) and the Alaska Administrative Code, Title 11, Chapters 86 (Mining Rights) and 96 (Miscellaneous Land Use), does hereby grant a Miscellaneous Land Use Permit to Martin M. Herzog for activities upon State-managed lands described in Annual Placer Mining Application No. A896073 for ADL 74488, "Almark Mine" and ADL 503514, "Heavy Duty Mine" only. No activities are authorized on claims or any portions of claims staked on State-Selected ground or topfiled on any Federal mining claims.

TERMS OF PERMIT

Effective dates of permit shall be March 1, 1989 through December 31, 1989.

sec. 1. GENERAL PROVISIONS. Operations under this permit shall be conducted in conformance with applicable federal, state, and local laws and regulations now, or hereafter, in effect during the life of the permit.

sec. 2. SURFACE USE. A locator does not have exclusive use of the surface of the location. A locator may not restrict public access to the surface without approved authorization [11 AAC 86.145(1)]. Issuance of this permit is not automatic authorization to restrict public access.

sec. 3. SURFACE STRUCTURES. Surface structures built or placed within the boundaries of a mining property must be necessary for mineral prospecting and development. The building or placing of surface structures must be approved through a plan of operation or land use permit [11 AAC 86.145(2)]. Issuance of this permit is not automatic authorization to construct or place surface structures.

sec. 4. OTHER OPERATIONS. (a) The granting of this permit does not preclude the issuance of other permits or leases on the same lands. Valid existing prior rights acquired on the lands described herein will not be adversely affected by this permit. (b) Where this permit grants the right to enter land owned, leased or otherwise lawfully occupied by another, the permittee shall make provisions before entering the land to pay for all damages sustained by said owner, lessee or lawful occupant by reason of entering upon said land (AS 38.05.130).

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

sec. 6. SPECIAL STIPULATIONS. In accordance with AS 38.05 (Alaska Land Act), approval of your application is hereby granted subject to the following stipulations:

1) Top soil and fines (including overburden muck and settling pond silts) shall be protected from erosion. No top soil or fines shall be disposed of in natural water bodies. When practicable, top soil and fines should be spread over the graded tailings to encourage natural revegetation and slope stability.

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

Completion reports are no longer required. Please be advised our approval of a Miscellaneous Land Use Permit does not relieve the applicant of the responsibility of securing other permits as required by federal, state or local authorities. Neither does this approval constitute certification of any property right or land status claimed by the applicant.

Attached is a partial summary of regulations applying to this permit. Questions concerning these regulations or this permit should be directed to Mitch Henning at 762-2109.

Sincerely,

Mitch Henning
Minerals Geologist

Attachment

cc: DNR/DL&WM (Mat-Su Area Office)(Keith Quintavell)
DEC (Wasilla)(Kevin K. Kleweno)
ADF&G (Habitat Division/Permitting)

Stu/379S

ATTACHMENT TO
MISCELLANEOUS LAND USE PERMIT

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

The locator will have exclusive right of extraction of the minerals, subject to provisions set forth in the above referenced statutes and regulations. These provisions establish the rights of the locator, protect the rights of the general public on public domain land, and provide controls over activities on State land to minimize adverse effects on the land and its resources. For example: (a) all operations are subject to inspection without notice (11 AAC 96.080); (b) bonding may be required (11 AAC 96.060); and (c) timber and gravel on a State mining claim belong to the State. Regulations allow their use for mining or development of the claim. Procedures permitting the sale of timber and gravel from a mining location are also addressed in the regulations. (A.S. 38.05.225)

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

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

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

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

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

4) The Director may prohibit the disturbance of vegetation within 300 feet of any waters located in specially designated 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 suppress 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 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 unnecessary 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.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

February 16, 1989

MEMORANDUM

TO:

FROM: Ginny Fay
Legislative Analyst

RE: Mining in Other Western States: Reclamation and Taxation Policies
Research Request 89.207

You requested information regarding other states' mining reclamation policies and statutes. You asked which state reclamation programs are authorized by statute rather than by regulation. You asked also for information regarding taxes paid by miners in other states in addition to specific mining taxes. To answer your questions, the first part of this memorandum discusses reclamation in other western states. This is followed by information on other state taxes.

Mining Reclamation in Other States

Generally speaking, the purpose of mining reclamation is to return land to its beneficial and productive use after mining operations have occurred. The state of Nevada, as part of an extensive overhaul of its mining statutes and programs, is conducting a comparative analysis of mining practices in the western states. Information from their final draft report on reclamation is summarized in this section.[1]

Not all western states have reclamation laws and those that do differ widely in the administration, organization, and implementation of their programs. Of the eleven western states reviewed by the Nevada study (which included Alaska but not Nevada), eight states have reclamation statutes. In contrast, Alaska, Arizona, and New Mexico reclamation standards are set by regulation and are part of the mining permit process (see Attachment A).

---

[1]Wanda Jo Gallaher and Susan Lynn, "A Comparison of Western States Reclamation and Bonding Regulations, Programs, and Practices for Discussing A Nevada Program," Final Draft Report, Public Resource Associates, January 1989.

State reclamation statutes also vary considerably with regard to enforcement and penalties for noncompliance. Penalties include lease or permit cancellation, bond forfeitures, and civil and criminal penalties and fines. See Attachment A for state specifics.

State Taxes in Addition to Specific Mining Taxes

Information on state taxes collected in addition to specific mining taxes was obtained from ten western states--Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming. The results are presented in Table 1. Except Wyoming and Nevada, these states have corporate income taxes applicable to miners.[2] Tax rates range from five percent in Colorado and Utah to 10.5 percent in Arizona.

Miners pay property taxes in all states contacted. Generally, this tax is administered by the state but collected by local governments. Mill rates are locally determined. In addition, six of the ten western states charge a sales or use tax on equipment. The state sales tax applies if items are purchased in-state. For items purchased out-of-state, a use tax, generally set at the same rate as the state sales tax, is charged on the market value of the item or equipment. Sales and use rates ranged from three to 6.8 percent.

* * *

I hope this information answers your questions. If you would like additional information, please do not hesitate to contact us.

Attachments

---

[2]A number of contacts in Nevada stated that their state's tax rates and policies are likely to change during the current legislative session; numerous tax bills have been introduced, some of which apply to miners.

ATTACHMENT A

Comparison of Features by State for Reclamation and Bonding

COMPARISON OF FEATURES BY STATE FOR RECLAMATION AND BONDING

	ALASKA	ARIZONA	CALIFORNIA	COLORADO	IDAHO	MONTANA	NEW MEXICO	OREGON	UTAH	WASHINGTON	WYOMING
STATE STATUTE	Miscellaneous Land Use T 11, C 96, AAC	no state reclamation law under leasing	Surface Mining and Reclamation Act	Colorado Mined Land Reclamation Act	Idaho Surface Mining Act Title 47, chpt 15	Metal Mine Reclamation Act Title 82, chpt. 4	reclamation standards set by State Land Office	Oregon Mined Land Reclamation Act OAR C 632 - 35	Mined Land Reclamation Act Chpt.8, Title 40	Surface Mined Land Reclamation Act, Chpt. 64	Environmental Quality Act, T 35, C 11, WSA
GOVERNING BODY	none	State Land Commissioner	State Mining and Geology Board	Mined Land Reclamation Board	State Board of Land Commissioners	Board of Land Commissioners	elected Commissioner of Public Lands	Governing Board - Department of Geology & Mineral Industries	Board of Oil, Gas, and Mining	Commissioner of Public Lands	Environmental Quality Council & Admin.-Land Quality Division
Administering State Agency	Department of Natural Resources Division of Mining	State Land Department	County review by: Mine Reclamation Program, Div. of Mines & Geology	Mined Land Reclamation Div. Department of Natural Resources	Bureau of Mines Dept. of Lands	Department of State Lands	State Land Office, Mineral Division	Department of Geology and Mineral Industries	Department of Natural Resources Division of Oil, Gas, and Mining	Department of Natural Resources Lands & Minerals, Geology & Earth Resources Divs.	Department of Environmental Quality, Land Quality Division
State Requires Notice of Intent or Permit	miscellaneous land use permit	prospecting permit or lease	County permit	notice to explore permit to operate	permit or notice	exploration license or permit		operating permit	notice, permit, lease	prospecting permit, lease, or mining contract	app. - drilling license - dozing permit - mining
1. On Federal Lands	yes	no	if have MOU's	yes	yes	yes	no	yes	notice/permit	yes	yes
2. On State Lands	yes	permit or lease	yes	yes	yes	yes	competitive lease	yes	both + lease	yes	yes
3. On Private Lands	yes	no	yes	yes	yes	yes	no	yes	notice/permit	yes	yes
Exemptions on Permits or Notices	no	no	none for permits	under 5 acres & little or no disturbance	for exploration if no motorized earth moving equipment is used	application for Small Miner's Exclusion	no	county permit, limited exemption total exemption	yes for < 5 acres no approval & no bond under notice	yes land examination Report of Survey	yes
MEMORANDUM OF UNDERSTANDING											
With Forest Service	no	no	some, by county	yes	yes	yes	no	yes	yes, bonding	yes	bonds and permits
With Bureau of Land Management	no	no	some, by county	yes	yes	yes	no	by BLM districts	yes, bonding	no	bonds and permits
EXPLORATION											
Defined	separately	separately	defined as part of surface mining	as prospecting	separately	separately	separately	separately	as part of mining activities	as part of surface mining	separately
Lead Agency	Natural Resources Div. of Mining	State Land Dept.	county or cities	Mined Land Reclamation Div.	Bureau of Mines Dept. of Lands	Department of State Lands	State Land Office	Dept. Geology & Mineral Indus.	Div. of Oil, Gas and Mining	Department of Natural Resources	Land Quality Division
Permit or Notice Required	miscellaneous land use permit	location notice exploring permit	permit	prospecting notice	prospecting notice	exploration license	lease application	operating permit	notice of intent	prospecting permit, or lease	notice - drilling license - dozing
1. Terms	one year, renewable	renew up to 5 yrs	prior to activity	duration, bond, and reclamation	within 7 days of start	duration	prior, 3 years, renewable	duration plus reclamation time	agree to reclaim lands	7 year lease	prior, yearly bond, reclamation
Reclamation Required	case by case	yes	yes	yes	yes	after 2 years	yes	yes	yes	yes	yes
1. Drill Holes	sometimes	sometimes	yes	in all cases	yes	yes	yes	yes	yes	yes	yes
2. Roads	sometimes	yes	if temporary road	if not used	yes	yes	yes	yes	yes, if not used		left if requested
Bonding Required	discretionary	discretionary	by county request	yes	yes	yes	yes	yes	yes	no	yes
1. Terms				$2000/acre/claim $25,000 statewide	cost basis	$263-$2500/acre	$2000 - $5000	except for exemptions	5 acres or more		$10,000 minimum
Small Miner Exemption Allowed	yes	no	yes	yes	yes	yes	no	yes	yes	yes	yes
1. Type	certain equipment types & vehicles		1000 cubic yards/acre/location	1600 sq f[illegible]cre 5 acres [illegible]de	acre limits	under 5 acres/yr or 36,500 tons/yr		acre limits 5000 cu yds/year	under 5 acres	under 3 a[illegible] or 30 ft. p[illegible]s	minor disturbance one time only

COMPARISON OF FEATURES BY STATE FOR RECLAMATION AND BONDING

	ALASKA	ARIZONA	CALIFORNIA	COLORADO	IDAHO	MONTANA	NEW MEXICO	OREGON	UTAH	WASHINGTON	WYOMING
DEVELOPMENT AND OPERATION											
Lead Agency	Natural Resources Div. of Mining	State Land Dept.	county or cities	Mined Land Reclamation Div.	as outlined in MOU	Department of State Lands	State Land Office	Dept. of Geology & Mineral Indus.	Division of Oil, Gas, & Mining	Department of Natural Resources	Land Quality Division
Permit Required	yes	mineral lease	yes	yes	yes	yes	lease application	operating permit	yes	contract or lease	permit & license
1. Terms	one year, renewable	20 years renewal option	duration of mine	duration of mine	annual renewable	yearly	renewable terms	duration plus reclamation time	life of mine	20 year mining contact	annual report life of operation
Plan of Operation Required	yes	yes	yes	for over 5 acres	yes	yes	yes	yes	yes	yes	yes
1. Reclamation Included	yes	yes	yes	yes	required	yes	yes	yes	yes	yes	yes
Bonding	discretionary	yes	by county request	performance	performance	performance	performance and damages	performance and chemical	performance	performance	performance
1. Dollar Amount		$2000/acre		up to $5000 for small miners; costs for large	up to $1000/acre	$1500-$8000/acre	$5000 minimum	$25,000-$500,000 on chemical bond	$1500-$5000/acre	cost of recovery	varies
2. Per Ton/Cubic Yard Basis				no	no		no				dirt/cubic yard reseeding
3. Per Acre Basis	level of activity			no	yes		no				
4. Worse Case Scenario				yes	no		no	credible accident	yes	yes	yes
5. Estimated Engineering Costs				for larger mines	costs + 10%	costs + 15%	no	costs-performance	yes	yes	yes
6. Clean-up Costs				yes	included		no		yes	yes	
7. Agency Signoff	yes			yes	yes	yes	no	yes			yes
Exemptions for Small Miners	yes	no	yes	yes	no	yes	no	yes	variances	yes	yes
1. Volume Basis			1000 cubic yards	70,000 tons and		36,500 tons/year	no	5000 cu yds/year			< 10,000 tons
2. Acreage Basis			or 1 acre	10 acres		5 acres	no	1 acre	5 acres or less	under 3 acres or 30 ft. pit wall	10 acres or less
3. Other	recreation mining season							lands disturbed prior to 7/1/72			
Secheduled Monitoring or Inspections for Reclamation Compliance	seasonal inspections	periodic	periodic	annual report	periodic	yes 1 to 4 times/yr.	no	yes	annual	periodic	annual inspection
Closure Regulations	no specifics	no	no	mandatory	no	no	no	seasonal & final	10 years inactive	no	guidelines
Action for Noncompliance	yes	lease cancelled	permit cancelled	yes	yes	yes	yes	yes	yes	cancellation	yes
1. Bond Forfeitures				forfeiture	forfeiture	case by case	yes	yes	yes	yes	yes + nonrenewal
2. Civil Penalties				$50-$200/day	$500-$2500/day	$100-$1000/day	yes		no	property lien	fines to $10,000
3. Misdemeanor if willful					$1000-$5000 fine						
4. Criminal penalty				mine closure	or 1 year prison		yes	$10,000 fine	$10,000 max. fine		yes
TYPES OF BONDING	Alaska has the authority to request a bond, but policy is to not request; will ask for bond if receive complaints or based on past poor performance		varies by county					on performance			
Surety Bond		yes		yes	yes	yes	yes	yes	yes	yes	yes
Certificate of Deposit		yes		yes	yes	yes	no	yes	yes	yes	yes
Letter of Credit		yes		yes	yes		no	yes	yes	yes	yes
Deeds of Trust				yes			no		yes		
1. Nonmining Property				yes	no						
2. Personal Property				yes	no				yes		
Savings Account					no		no		yes	yes	yes
Cash		yes		yes	yes	yes	yes	yes	yes	yes	yes
Certified Financial Statements				yes	no		no		yes		
Self-Bonding				yes	no		NM counties or US		board		yes
Government Bonds/Bills					yes		no		yes		yes
Assignable Bonds & Notes							no				
Other Nonspecified							no	yes			any combination

COMPARISON OF FEATURES BY STATE FOR RECLAMATION AND BONDING

	ALASKA	ARIZONA	CALIFORNIA	COLORADO	IDAHO	MONTANA	NEW MEXICO	OREGON	UTAH	WASHINGTON	WYOMING
GUIDELINES FOR RECLAMATION											
Reclamation Practices	yearly										complete reveget.
1. Time Allowed	prefer end of			5 yrs each phase	1 year	2 years	2 years	up to 3 years	3 yrs - 70% reveg	2 years	up to 10 years
a. Concurrent	season, or first	concurrent	yes	encouraged	recommended	encouraged	case by case		encouraged	1 season	yes
b. Upon Closure	of next season		yes		yes	yes	yes	yes	yes	1 season	yes
Contouring/Resloping	stipulated	yes	yes	yes	yes	yes	yes	yes	yes		yes
Topsoil Replacement	site specific	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Pit Backfill		yes					yes		yes	unacceptable	varies
Revegetation	natural reseeding	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
Stabilization of Soils			yes	yes	yes	ongoing	yes	yes	yes	yes	yes
Restoration To	minimize damage	not required	usable condition	beneficial use	former use	former use	state standards	greatest degree	stable condition	beneficial use	equal use
1. Years to Complete	natural growth			5 years	3 years			3 years	3 years		5 years
Cyanide Ponds Neutralized	yes	yes		yes	yes	yes	yes	yes	yes	no	yes
Leach Pads Leveled/Neutralized	yes	yes		yes	yes	yes	yes	yes	yes	no	yes
Water/Water Systems Protected	yes	yes	yes	yes	yes		yes	monitored	yes	yes	yes
Roads											
1. Left in Place	case by case			if needed or used	if Board requests	if used	case by case		if requested		if justified
2. Reclaimed		yes	yes	otherwise yes	otherwise yes	after 2 years		yes	yes	yes	yes
Other Toxic Materials	handled by DEC	yes	protected, buried or removed	buried	removed	yes	yes	removed and isolated	removed or isolated	removed	removed or buried
Environmental Checklist	no	native plants	part of EIR	no	no	guidelines and MEPA	in terms of lease	as part of permit application	archaeological clearances	yes	in guidelines
State Requires Reclamation On:											
1. Private	yes	no	yes	yes	yes	yes	no	yes	yes	yes	yes
2. State	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
3. Federal	yes	no	yes	yes	yes	yes	no	yes	yes	yes	yes
RECLAMATION FUND	yes	no	not for surface mining	no	yes	yes	no	no	no	no	yes
Funding Source											
1. Bond Forfeiture					yes	yes					yes
2. Fines					yes	yes					yes
3. State grant	yes				no						
4. Budgeted					no	yes					yes
5. Mine Tax					no	yes					
Monies Spent	$99,000 for 1989				no exact figures	yes					yes
Expenditures For	abandoned gold mine				forfeited sites	forfeited sites, research, and reclamation					forfeited sites
CONSISTENCY WITH LOCAL PLANS				not required			not required	mandatory under	yes	yes	yes
County Planning	no counties state, local & Coastal Zone management plans	yes	yes	local government approval	yes	impact plan for large operations		Land Conservation & Development Act		county approval	
Agricultural Zoning										no	
Public Hearing	sometimes	sometimes	required	if cont[illegible]	public response			required	comment period	public [illegible]se	public response

ATTACHMENT B

Oregon Administrative Rules, Chapter 632, Division 35
Department of Geology and Mineral Industries; Montana's Title 82,
Chapter 4; An Act, Senate Bill 162; Washington State, Chapter 78.44 RCW
and Department of Natural Resources Division of Oil, Gas and
Mining State of Utah

OREGON ADMINISTRATIVE RULES

CHAPTER 632, DIVISION 35 - DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES

DIVISION 35

OREGON MINED LAND RECLAMATION ACT

Applicable to Coal and Metal-Bearing Ore Operations

Obtaining Permits After August 16, 1981

Purpose of These Rules and Regulations

632-35-005(1) For Coal and Metal-bearing Ores these rules implement the purposes of ORS 517.750 to 517.955 and 517.990(3), (4), and (5) as declared by the Legislative Assembly:

(a) To provide that the usefulness, productivity, and scenic values of all lands and water resources affected by surface and underground mining within this state receive the greatest practical degree of protection and reclamation necessary for their intended subsequent use.

(b) To provide for cooperation between private and government entities in carrying out the purposes of ORS 517.750 to 517.955 and 517.990(3), (4), and (5).

(2) These rules prescribe procedures for obtaining an Operating Permit and for complying with the other requirements of the Oregon Mined Land Reclamation Act; ORS 517.750 to 517.955 as amended and subsections (3), (4), (5) and (6) of ORS 517.990.

(3) Applicants seeking Operating Permits from the Department should be aware that other state, federal and local agencies may require the applicant to obtain approval prior to operation. For example, the Department of Environmental Quality (DEQ) may require contaminant discharge permits for air, waste water and solid waste disposal. Where feasible the Department shall coordinate with other agencies to avoid duplication on the part of applicants. An Operating Permit from the Department does not constitute authorization to proceed without approval of other agencies if required. It is the applicant's responsibility to obtain other necessary permits.

Definitions

632-35-010 The definitions in ORS 517.750 apply to these regulations.

(1) "Affected", as used in ORS 517.750(13)(a) means the disturbance by excavation or any other surface mining or milling on any land surface during any stage of mineral production, or the covering of any land surface by surface mining refuse.

(2) "A period of 12 consecutive calendar months", as used in ORS 517.750(13) begins on the date surface mining begins.

(3) "Board" means the Governing Board of the State Department of Geology and Mineral Industries.

(4) "Chemical Processing Bond or Other Approved Security" is the bond or other approved security an operation capable of chemically leaching more than 5,000 cubic yards/year of material shall post. The bond shall be posted in an amount not less than $25,000 or more than $500,000 and shall be applied specifically to the reclamation procedures associated with the credible accident or decommissioning of an ore processing facility.

(5) "Closure Order" is a written notice from the Department requiring the operator to cease and desist from mining or processing mined material at the site described in the written notice.

(6) "Credible accident" is defined as an unplanned discharge of ore processing solutions, ore processing solution contaminated water, or chemicals from a mine facility into the surface water, ground water, soil, overburden, or living resources in sufficient quantities to impair the existing quality or pre-mine use of the receiving water, soil, overburden, or living resources which would exceed the discharge standards of DEQ.

(7) "Department" means the Department of Geology and Mineral Industries.

(8) "Disturbed area" is any area within permit area boundary where surface or ground water resources are impacted as a result of mining, milling or mine facilities.

(9) "Expansion" as used in these rules means lateral expansion consequential to surface mining into land surfaces previously not affected by surface mining.

(10) "Limited exemption" means surface mining which although not entitled to a "total exemption" is eligible for certain grandfather rights under ORS 517.770 and operates under a limited exemption certificate issued by the Department.

(11) "Mine facilities" as used here includes but is not limited to the following:

- (a) leach pads and vats
- (b) recovery plants or mill
- (c) process solution ponds and storage ponds
- (d) impoundments and diversions
- (e) tailing disposal facility

(12) "Nonaggregate minerals" means coal and metal-bearing ores, including but not limited to ores that contain or are purported to contain nickel, cobalt, lead, zinc, gold, molybdenum, uranium, silver, aluminum, chromium, copper or mercury.

(13) "Operating Permit" is the permit issued by the Department that allows for the mining and processing of coal and metal-bearing ores as

described in ORS 517.790 and provides for reclamation as specified in ORS 517.750(11).

(14) "Ore processing" means milling, heap leaching, flotation, or other mineral concentration process.

(15) "Ore processing solutions" are defined as those solutions which are used directly or indirectly to recover minerals.

(16) "Permit Area" is the area of surface mining and exploration as defined in ORS 517.750(13). Permit area is defined by boundaries submitted on a map acceptable to the Department and means the area to be covered by an Operating Permit. The permit area will generally be a contiguous parcel or parcels which are available to the permittee for surface mining. Areas used for the storage or disposition of any product or waste material from the surface mining operation even though separate from the area of extraction shall be included in the permit area. The permit area may be redefined as mining progresses. In the case of exploration, the permit area includes, but is not limited to, areas proposed for surface disturbance by drilling, drill pad construction, trenches and any roads newly constructed or improved with heavy equipment other than the road used to access the permit area.

(17) "Pre-mine use" when used in reference to surface or ground water means pre-mine uses that include but are not limited to:

(a) drinking water
(b) fishery
(c) agriculture
(d) recreation

(18) "Prospecting" and/or "exploration" means all activities conducted on or beneath the earth's surface for the purpose of determining presence, location, extent, depth, grade, or economic viability of a deposit.

(19) "Reclamation" means the employment in surface mining of procedures reasonably designed to minimize as much as practicable the disruption from surface mining and to provide for the rehabilitation of any surface resources through the use of plant cover, soil stability techniques, and through the use of measures to protect the surface and subsurface water resources, including but not limited to domestic water use and agricultural water use, and other measures appropriate to the subsequent beneficial use of such mined and reclaimed lands.

(20) "Surface mined prior to July 1, 1972", means land affected by surface mining before July 1, 1972, which has not been adequately reclaimed.

(21) "Surface mined prior to January 1, 1981" means: land affected by surface mining, milling or ore processing before January 1, 1981, under the provisions of the valid contract clause of ORS 517.770(1)(c) which has not been adequately reclaimed.

(22) "Total Exemption" means surface mining that is exempted from the requirements of these rules. The Department may require certain information

to be provided under OAR 632-35-016(2) to establish exemptions.

General Information

632-35-015(1) Information Requirements. The Department may require any information needed to determine the status of any surface mining. Proprietary information includes but is not limited to trade secrets, business records and production figures, and shall be held confidential. Information concerning ownership, location, and the identity of the operator are matters of public record as are actions taken by the Department with regard to any mining operation or permit application.

(2) Inspections. As provided by ORS 517.850 the Department may, after reasonable notice, inspect any surface mining site to determine status or compliance. The Department will report the results of these inspections to the permittee in writing.

(a) Initial inspections shall be conducted by the Department. Reasons for the inspections include but are not limited to:

(A) determining existing environmental conditions
(B) reviewing the proposed mine operation
(C) reviewing the proposed reclamation plan
(D) collecting data to calculate a bond
(E) monitoring the construction of facilities

(b) Annual and non-scheduled inspections may be conducted by the Department. Reasons for the inspection include but are not limited to:

(A) reviewing operating permit compliance
(B) investigating public complaints
(C) evaluating the site bond level

(3) County Authority:

(a) The Department shall recognize permits issued under county ordinances in lieu of permits required by these rules if such county ordinances have been approved by the Board before July 1, 1984. The Board may approve a county ordinance provided the ordinance meets the administrative and reclamation standards contained in ORS 517.750-517.955 and 517.990(3), (4), (5) and (6), and these rules and provision is made for the reclamation to be secured by an adequate reclamation bond or alternate security. Examination for approval of proposed county ordinances shall include, but is not limited to, the following criteria:

(A) Fully qualified professional personnel to administer the ordinance.

(B) Circulation for review of all applications and supporting documents to all appropriate natural resource public agencies, including the Department.

(C) Provision for completed processing and issuance of permits in the same or less time as the state.

(D) Provision for annual field inspections and for preparation and

maintenance of permanent records and reports.

(E) Provision for prior mined (grandfathered) sites as provided in state law.

(F) Provision for regulation of expansion (as defined in OAR 632-35-010(5)) of grandfathered sites.

(G) Adoption of the criteria regarding final slopes and water depths contained in these rules and regulations.

(H) Provision for bonding or adequate alternate security.

(I) Provision for confidentiality of information as provided for in state law.

(J) A statement of penalties.

(K) A complete mined land reclamation document which does not require reference to other documents for compliance and which is freestanding and not merely a part of a zoning ordinance.

(L) Provision to assume administration of all surface mining within the local agency's jurisdiction except municipalities within the county unless the city consents thereto as provided in ORS 517.780(2). Sites for which authority is not assumed, such as those on federal land, should be clearly exempted and left in state jurisdiction within the language of the ordinance. On those lands for which the county proposes to assume authority, the county must provide for reclamation of all categories of surface mining regulated under state law.

(M) Provision for incorporation of future changes of the state law into the local ordinance.

(N) Provision for review by the Board of future proposed changes in the local ordinance.

(O) Description of transition mechanism for transfer from state to county or city authority shall be provided for either in the ordinance or in a memorandum of understanding.

(b) The Board may rescind approval of a county ordinance if the county does not enforce its ordinance as approved by the Board or at the request of the county. When the Board recognizes county authority to issue surface mining permits in lieu of the permits required by these rules, the county will provide the Department with copies of all such applications, permits, denials, reclamation plans, and inspection reports. The Department may inspect those sites after giving reasonable notice to the operator and appropriate county authority.

(c) Umatilla and Clackamas counties may continue to operate their own reclamation programs as long as they maintain the standards specified in their approved ordinances. Changes to the reclamation ordinances in those counties must be approved by the Board. Changes to the reclamation ordinances must be consistent with state law and must be submitted to the

Board for approval. Routine audits of the county programs shall be conducted by the Department to ensure compliance with state laws, rules, and county ordinances. Any deficiencies noted during the audit will be given in writing to the county along with a reasonable date to reach compliance. Authorization will be withdrawn by the Board if a county fails to maintain an adequate reclamation program.

(4) Surface Mining on Federal Lands. Surface mining conducted on federal lands, is subject to ORS 517.750-517.990 (3), (4), and (5) and these rules. The Department shall coordinate with agencies of the federal government to minimize conflict or duplication in operating, reclamation and security requirements. The board may enter into formal agreements with federal agencies to establish the means by which these rules are carried out.

(5) Fees. Maximum fees are established by law and specific fees are set by the Department.

(a) Each application for an Operating Permit or Limited Exemption Certificate for coal or metal-bearing ores shall be accompanied by an application fee equal to that specified under ORS 517.800. For sites requiring special review and monitoring the Department shall assess a processing fee sufficient to cover costs of the Department in processing the application and regulating the site annually, as determined by the Department. The application fee from ORS 517.800 must accompany the application; any balance due will be requested by the Department in writing and must be submitted prior to issuance of the permit.

(b) Each permit and certificate holder shall pay an annual fee on or before the last day of the month shown on the permit as the anniversary month. The annual fee shall be in accordance with ORS 517.800(2), plus the balance of any additional actual cost the Department incurs from inspections or review in accordance with 517.920. The annual report form (SMLR-7) must be submitted to the Department by the last day of the anniversary month. As a courtesy, the Department may notify the permittee with a notice of these requirements at least 45 days prior to the due date. Failure of the permittee to pay the fee may result in the issuance of a Closure Order by the Department.

(c) Application fees are not refundable. Unspent balances of processing fees are refundable.

(d) Fees may be prorated at the applicant's request in order to adjust the anniversary date. The prorated fee will be on the basis of 1/12th the annual fee per month.

(e) For sites on which a processing fee is assessed a specific cost center for accounting purposes shall be established and the operator shall be provided with periodic cost summaries.

(f) The Department may require a lesser fee, upon completion of all reclamation, with the exception of vegetation establishment, per the approved Operating Permit.

(6) Closure Orders and Invalidation.