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5982 HOUSE RESOURCES

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1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels are to be affected by the mining operation, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. Erosion Control - Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5 Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R613-003-108. Hole Plugging Requirements.

Drill holes shall be properly plugged as soon as practical and shall not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of the operations.

1. Surface plugging of drill holes shall be accomplished by:

1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete

surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2 1/2 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:

   2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow.

   Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, he must notify the Division in writing that he accepts responsibility for the ultimate plugging of the drill hole.

   2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by:

   2.12.111. Placing a 50 foot cement plug immediately above and below the aquifer(s); or

   2.12.112. Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R613-003-109. Reclamation Practices.

During reclamation, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

   1.11. The permanent sealing of shafts and tunnels;

   1.12. The disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

   1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R613-003-108;

   1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels have been affected by mining operations, then reclamation must be performed such that the channels will be left in a stable condition with respect to actual and reasonably expected water flow so as to avoid or minimize future damage to the hydrologic system.

3. Erosion Control - Reclamation shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or left in an isolated or neutralized condition such that adverse environmental effects are eliminated or controlled.

5. Land Use - The operator shall leave the onsite area in a condition which is capable of supporting the postmining land use.

6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - Onsite roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface, so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover*; and

the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. the Division determines that the revegetation work has been satisfactorily completed within practical limits; where reseeding has occurred and the vegetation has survived one growing season, the reseeded area shall not be included for purposes of determining whether a mining operation is a small mining operation.

* Note: If the premining vegetative ground cover of the disturbed area is unknown, then the ground cover of an adjacent undisturbed area that is representative of the premining conditions will be used as a standard.

R613-003-110. Variance.

1. The operator may request a variance from Rule R613-003-107, 108, or 109 by submitting the following information which shall be considered by the Division on a site-specific basis:

   1.11. The rule(s) as to where a variance is requested;

   1.12. The variance requested and a description of the area that would be affected by the variance;

   1.13. Justification for the variance;

   1.14. Alternate methods or measures to be utilized.

2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.

3. Any variance must be specifically approved by the Division in writing.

R613-003-111. Failure to Reclaim.

If the operator of a small mining operation fails or refuses to conduct reclamation as required by the Act and these rules, the Board may, after notice and hearing, order that:

1. Reclamation be conducted by the Division; and

2. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court.

R613-003-112. Suspension or Termination of Operations.

1. All mine operations are required to be maintained in a safe, clean, and environmentally stable condition. Active and inactive operations must continue to submit annual reports unless waived in writing by the Division.

2. The operator need not notify the Division of the temporary suspension of small mining operations.

3. In the case of a termination or a suspension of mining operations that has exceeded, or is expected to exceed two (2) years, the operator shall, upon request, furnish the Division with such data as it may require to evaluate the status of the small mining operation, the status of compliance with these rules, and the probable future status of the land affected. Upon review of such data, the Division will take such action as may be appropriate. The Division may grant an extended suspension period if warranted.

4. The operator shall give the Division prompt written notice of a termination or suspension of small mining operations expected to exceed five (5) years. Upon receipt of notification the Division shall, within 30 days, make an inspection of the property.

5. Small mining operations that have been approved for an extended suspension period will be reevaluated on a regular basis. Additional interim reclamation or stabilization measures may be required in order for a small mining operation to remain in a continued state of suspension. Reclamation of a small mining operation may be required after five (5) years of continued suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of said 10-year period for a longer suspension period.

R613-003-113. Mine Enlargement.

Before enlarging a small mining operation beyond five (5) acres of surface disturbance, the operator must file a Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) and receive Division approval.

R613-003-114. Revisions.

Small mining operators are required to submit a revision to the complete notice of intention when a significant change(s) in the small mining operation occurs. A revision can be made by submitting a revised FORM MR-SMO (or similar form) and indicating the portion(s) of the operation which is being revised. Division approval of a revision of small mining operations is not required before the operational change occurs.

R613-003-115. Transfer of a Notice of Intention.

If an operator wishes to transfer a small mining operation to another party, an application form entitled, Transfer of Notice of Intention - Small Mining Operations (FORM MR-TRS) must be completed and filed with the Division. The new mine operator must assume full responsibility for continued mining operations and reclamation obligations for the small mining operation.

R613-003-116. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting small mining operations must file an operations and progress report (FORM MR-AR) describing its operations during the preceding calendar year, including:

   1.11. The location of the operation and the number and date of the applicable Notice of Intention,

1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials,

1.13. New surface disturbances created during the year,

1.14. The reclamation work performed during the year.

2. The operator shall keep and maintain timely records relating to his performance under the Act and still make these records available to the Division upon request.

R613-003-117. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in the R613-005 Rules, shall be applicable to minerals regulatory proceedings.

R613-003-118. Confidential Information.

Information provided in the notice of intention relating to the location, size, and nature of the mineral deposit, and marked confidential by the operator, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator, or until the notice of intention is terminated.

KEY: Minerals reclamation 40-8-1
1988 et seq

MINERALS RECLAMATION PROGRAM

R613-004 LARGE MINING OPERATIONS

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Forms to be used in conjunction with the Rules:

FORM MR-LMO Notice of Intention to Commence Large Mining Operations
FORM MR-RC Reclamation Contract
FORM MR-REV Notice of Intention to Revise Large Mining Operations
FORM MR-AR Annual Report of Mining Operations
FORM MR-TRL Transfer of Notice of Intention-Large Mining Operations

R613-004 LARGE MINING OPERATIONS

R613-004-101. Filing Requirements and Review Procedures.

A Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) or a letter containing all the required information must be approved by the Division before mining operations begin.

Previously exempt mining operations as defined by Rule 613-001-109 which have a disturbed area greater than five (5) surface acres and which will continue or resume mining operations, must submit a Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) by April 29, 1989. Upon Division receipt of the notice of intention, the operator will be authorized to continue such existing operations until approval of the notice of intention is obtained. Such approval will be obtained by the operator within one (1) year from the date of submittal of the notice of intention unless an extension is granted by the Division.

1. Within 30 days after receipt of a Notice of Intention, or within 30 days after receipt of any subsequent submittal, the Division will complete its review and notify the operator in writing:

   1.11. That the notice of intention is complete; or

   1.12. that the notice of intention is incomplete, and that additional information as identified by the Division will be required.

2. Within 30 days after receipt of the notice of intention or within 30 days following the last action of the operator or Division on the notice of intention, the Division shall reach a tentative decision with respect to the approval or denial of the notice of intention.

   Notice of the tentative decision will then be published in accordance with Rule R613-004-116.

3. Division approval of the notice of intention and execution of the Reclamation Agreement (FORM MR-RA) by the operator shall bind the Division and the operator in accordance with the Act and implementing regulations; and, shall enable the operator to conduct mining and reclamation activities in accordance therewith.

4. The operator must notify the Division within 30 days of beginning mining operations.

R613-004-102. Duration of the Notice of Intention.

The approved notice of intention, including any subsequently approved amendments or revisions, shall remain in effect for the life of the mine. However, the Division may review the permit and require updated information and modifications when warranted.

R613-004-103. Notice of Intention to Commence Large Mining Operations.

The notice of intention shall address the requirements of the following rules:

Rule #	Subject
R613-004-104	Operator(s), Surface and Mineral Owner(s)
R613-004-105	Maps, Drawings and Photographs
R613-004-106	Operation Plan
R613-004-108	Hole Plugging Requirements
R613-004-109	Impact Assessment
R613-004-110	Reclamation Plan
R613-004-112	Variance

R613-004-104. Operator(s), Surface and Mineral Owner(s).

1. The name, permanent mailing address, and telephone number of the operator responsible for the mining operations and reclamation of the site.

2. The name, permanent mailing address, and telephone number of the surface landowner(s) and mineral owner(s) of all land to be affected by the operations.

3. The federal mining claim number(s), lease number(s), or permit number(s) of any mining claims, or federal or state leases or permits included in the lands affected.

R613-004-105. Maps, Drawings and Photographs.

1. A topographic base map must be submitted with the notice of intention. The scale should be approximately 1 inch = 2,000 feet, preferably a USGS 7.5 minute series or equivalent topographic map where available. The following information shall be included on the map:

   1.11. Property boundaries of surface ownership of all lands which are to be affected by the mining operations;

   1.12. Perennial streams, springs and other bodies of water, roads, buildings, landing strips, electrical transmission lines, water wells, oil and gas pipelines, existing wells, boreholes, or other existing surface or subsurface facilities within 500 feet of the proposed mining operations;

   1.13. Proposed route of access to the mining operations from nearest publicly maintained highway. The map scale will be appropriate to show access.

   1.14. Known areas which have been previously impacted by mining or exploration activities within the proposed disturbed area.

2. A surface facilities map shall be provided at a scale of approximately 1" = 500'. The following information shall be included on the surface facilities map:

   2.11. Proposed surface facilities, including but not limited to buildings, stationary mining/processing equipment, roads, utilities, power lines, proposed drainage control structures, and, the location of topsoil storage areas, tailings or processed waste facilities, disposal areas for overburden, solid and liquid wastes and wastewater discharge treatment and containment facilities;

2.12. A border clearly outlining the acreage proposed to be disturbed by mining operations.

3. The following maps, drawings or cross sections may be required by the Division:

3.11. Regraded Slopes to be left at steeper than 2h:1v;

3.12. Plans, profiles and cross sections of roads, pads or other earthen structures to be left as part of the postmining land use;

3.13. Water impounding structures with embankments greater than 20 feet in height from the upstream toe of the embankment or greater than 20 acre feet in storage capacity;

3.14. Maps identifying surface areas which will be disturbed by the operator but will not be reclaimed, such as solid rock slopes, cuts, roads, or sites of buildings or surface facilities to be left as part of the postmining land use;

3.15. Sediment ponds, diversion channels, culvert size and locations, and other hydrologic designs and features to be incorporated into the mining and reclamation plan;

3.16. Baseline information maps and drawings including soils, vegetation, watershed(s), geologic formations and structure, contour and other such maps which may be required for determination of existing conditions, operations, reclamation and postmining land use;

3.17. A reclamation activities and treatment map to identify the location and the extent of the reclamation work to be accomplished by the operator upon cessation of mining operations. This drawing shall be utilized to determine adequate bonding and reclamation practices for the site;

3.18 Other maps, plans, or cross sections as may reasonably be required by the Division.

4. The operator may submit photographs (prints) of the site sufficient to show existing vegetation and surface conditions. These photographs should show the general appearance and condition of the land to be affected and should be clearly marked as to the location, orientation and the date that the pictures were taken.

R613-004-106. Operation Plan.

The operator shall provide a narrative description referencing maps or drawings as necessary, of the proposed operations including:

1. Type of mineral(s) to be mined;

2. Type of operations to be conducted, including the mining/processing methods to be used onsite, and the identification of any deleterious or acid forming materials present or to be left on the site as a result of mining or mineral processing;

3. Estimated acreages proposed to be disturbed and/or reclaimed annually or sequentially;

4. A description of the nature of the materials to be mined or processed including waste/overburden materials and the estimated annual tonnages of ore and waste materials to be mined;

5. A description of existing soil types, including the location and extent of topsoil or suitable plant growth material. If no suitable soil material exists, an explanation of the conditions shall be given;

6. A description of the plan for protecting and redepositing existing soils;

7. A description of existing vegetative communities and cover levels, sufficient to establish revegetation success standards in accordance with Rule R613-004-111;

8. Depth to groundwater, extent of overburden material and geologic setting;

9. Proposed location and size of ore and waste stockpiles, tailings facilities and water storage/treatment ponds.

R613-004-107. Operation Practices.

During operations, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare during operations. Methods to minimize hazards shall include but not be limited to:

   1.11. The closing or guarding of shafts and tunnels to prevent unauthorized or accidental entry in accordance with MSHA regulations;

   1.12. The disposal of trash, scrap metal and wood, and extraneous debris;

   1.13. The plugging or capping of drill, core, or other exploratory holes as set forth in Rule R613-004-108;

   1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

   1.15. The construction of berms, fences and/or barriers above highwalls or other excavations when required by the Division.

2. Drainages - If natural channels are to be affected by the mining operation, then the operator shall take appropriate measures to avoid or minimize environmental damage.

3. Erosion Control - Operations shall be conducted in a manner such that sediment from disturbed areas is adequately controlled. The degree of erosion control shall be appropriate for the site-specific and regional conditions of topography, soil, drainage, water quality or other characteristics.

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled.

5. Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

R613-004-108. Hole Plugging Requirements.

Drill holes shall be properly plugged as soon as practical and shall not be left unplugged for more than 30 days without approval of the Division. The procedures outlined below are required for the surface and subsurface plugging of drill holes. The Division may approve an alternate plan, if the operator can prove to the satisfaction of the Division that another method will provide adequate protection to the groundwater resources and long term stability of the land. Dry holes and nonartesian holes which do not produce significant amounts of water may be temporarily plugged with a surface cap to permit the operator to re-enter the hole for the duration of operations.

1. Surface plugging of drill holes shall be accomplished by:

   1.11. Setting a nonmetallic permaplug at a minimum of five (5) feet below the surface, or returning the cuttings to the hole and tamping the returned cuttings to within five (5) feet of ground level. The hole above the permaplug or tamped cuttings will be filled with a cement plug. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing.

   1.12. If the area is tilled farmland, a five (5) foot cement plug must be placed above a permaplug or tamped cuttings so that the top of the cement plug is a minimum of three (3) feet below the ground surface. The hole above the cement plug is to be filled with soil. If cemented casing is to be left in place, a concrete surface plug is not required provided that a permanent cap is secured on top of the casing. The top of the casing and cap must be a minimum of three (3) feet below the ground surface.

2. Drill holes that encounter water, oil, gas or other potential migratory substances and are 2 1/2 inches or greater in surface diameter shall be plugged in the subsurface to prevent the migration of fluid from one strata to another. If water is encountered, plugging shall be accomplished as outlined below:

   2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of

API Class A or H cement with additives as needed. It should weigh at least 13.5 lbs./gal., and be placed under the supervision of a person qualified in proper drill hole cementing of artesian flow. Artesian bore holes must be plugged in the described manner, prior to removal of the drilling equipment from the well site. If the surface owner of the land affected desires to convert an artesian drill hole to a water well, he must notify the Division in writing that he accepts responsibility for the ultimate plugging of the drill hole.

2.12. Holes that encounter significant amounts of nonartesian water shall be plugged by:

2.12.111 Placing a 50 foot cement plug immediately above and below the aquifer(s); or

2.12.112 Filling from the bottom up (through the drill stem) with a high grade bentonite/water slurry mixture. The slurry shall have a Marsh funnel viscosity of at least 50 seconds per quart prior to the adding of any cuttings.

R613-004-109. Impact Assessment.

The operator shall provide a general narrative description identifying potential surface and/or subsurface impacts. This description will include, at a minimum:

1. Projected impacts to surface and groundwater systems,

2. Potential impacts to state and federal threatened and endangered species or their critical habitats,

3. Projected impacts of the mining operation on existing soil resources,

4. Projected impacts of mining operations on slope stability, erosion control, air quality, and public health and safety, and

5. Actions which are proposed to mitigate any of the above referenced impacts.

R613-004-110. Reclamation Plan.

Each notice of intention shall include a reclamation plan, including maps or drawings as necessary, consisting of a narrative description of the proposed reclamation including, but not limited to:

1. A statement of the current land use and the proposed postmining land use for the disturbed area;

2. A description of the manner and the extent to which roads, highwalls, slopes, impoundments, drainages, pits and ponds, piles, shafts and adits, drill holes, and similar structures will be reclaimed;

3. A detailed description of any surface facilities to be left as part of the postmining land use, including but not limited to buildings, utilities, roads, pads, ponds, pits and surface equipment;

4. Deleterious Materials - All deleterious or potentially deleterious material shall be safely removed from the site or kept in an isolated condition such that adverse environmental effects are eliminated or controlled.

5. Soils - Suitable soil material shall be removed and stored in a stable condition where practical so as to be available for reclamation.

6. Concurrent Reclamation - During operations, disturbed areas shall be reclaimed when no longer needed, except to the extent necessary to preserve evidence of mineralization for proof of discovery. Areas which have been disturbed but are not routinely or currently utilized shall be kept in a safe, environmentally stable condition.

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   2.11. If artesian flow (i.e., water flowing to the surface from the hole) is encountered during or upon cessation of drilling, a cement plug shall be placed to prevent water from flowing between geologic formations and at the surface. The cement mix should consist of

4. A description of the treatment, location and disposition of any deleterious or acid-forming materials generated and left onsite, including a map showing the location of such materials upon the completion of reclamation.

5. A planting program as best calculated to revegetate the disturbed area;

   5.11. Plans shall include, at a minimum, grading and/or stabilization procedures, topsoil replacement, seed bed preparation, seed mixture(s) and rate(s), and timing of seeding (fall seeding is preferred timing);

   5.12. Where there is no original protective cover, an alternate practical procedure must be proposed to minimize or control erosion or siltation;

R613-004-111. Reclamation Practices.

During reclamation, the operator shall conform to the following practices unless the Division grants a variance in writing:

1. Public Safety and Welfare - The operator shall minimize hazards to the public safety and welfare following completion of operations. Methods to minimize hazards shall include but not be limited to:

   1.11. The permanent sealing of shafts and tunnels;

   1.12. The disposal of trash, scrap metal and wood, buildings, extraneous debris, and other materials incident to mining;

   1.13. The plugging of drill, core, or other exploratory holes as set forth in Rule R613-004-108;

   1.14. The posting of appropriate warning signs in locations where public access to operations is readily available;

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6. Slopes - Waste piles, spoil piles and fills shall be regraded to a stable configuration and shall be sloped to minimize safety hazards and erosion while providing for successful revegetation.

7. Highwalls - In surface mining and in open cuts for pads or roadways, highwalls shall be reclaimed and stabilized by backfilling against them or by cutting the wall back to achieve a slope angle of 45 degrees or less.

8. Roads and Pads - Onsite roads and pads shall be reclaimed when they are no longer needed for operations. When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use.

9. Dams and Impoundments - Water impounding structures shall be reclaimed so as to be self-draining and mechanically stable unless shown to have sound hydrologic design and to be beneficial to the postmining land use.

10. Trenches and Pits - Trenches and small pits shall be reclaimed.

11. Structures and Equipment - Structures, rail lines, utility connections, equipment, and debris shall be buried or removed.

12. Topsoil Redistribution - After final grading, soil materials shall be redistributed on a stable surface, so as to minimize erosion, prevent undue compaction and promote revegetation.

13. Revegetation - The species seeded shall include adaptable perennial species that will grow on the site, provide basic soil and watershed protection, and support the postmining land use.

Revegetation shall be considered accomplished when:

13.11. The revegetation has achieved 70 percent of the premining vegetative ground cover*; and

the vegetation has survived three growing seasons following the last seeding, fertilization or irrigation, unless such practices are to continue as part of the postmining land use; or

13.12. the Division determines that the revegetation work has been satisfactorily completed within practical limits.

*Note: If the premining vegetative ground cover is unknown, the ground cover of an adjacent undisturbed area that is representative of the premining ground cover will be used as a standard.

R613-004-112. Variance.

1. The operator may request a variance from Rule R613-004-107, 108, or 111, by submitting the following information which will be considered by the Division on a site-specific basis:

1.11. The rule(s) as to which a variance is requested;

1.12. The variance requested and a description of the area that would be affected by the variance;

1.13. Justification for the variance;

1.14. Alternate methods or measures to be utilized.

2. A variance shall be granted if the alternative method or measure proposed will be consistent with the Act.

3. Any variance must be specifically approved by the Division in writing.

R613-004-113. Surety.

1. After receiving notification that the notice of intention has been approved, but prior to commencement of operations, the operator shall provide the reclamation surety to the Division.

2. The Division will not require a separate surety when a reclamation surety in a form and amount acceptable to the Board is held by the Division of State Lands and Forestry, or an agency of the federal government.

3. As part of the review of the notice of intention, the Division shall determine the required surety amount based on site specific calculations reflecting the Division's cost to reclaim the site. An operator's estimate will be accepted if it is accurate and verifiable.

4. The operator shall submit a completed Reclamation Contract (FORM MR-RC) with the required surety. The form and amount of the surety must be approved by the Board. Acceptable forms may include:

4.11. Corporate surety bond,

4.12. Federally-insured certificate of deposit payable to the State of Utah, Division of Oil, Gas and Mining,

4.13. Cash,

4.14. An irrevocable letter of credit issued by a bank organized to do business in the United States, or

4.15. Escrow accounts.

4.16. In addition, the Board may accept a written self-bonding agreement in the case of operators showing sufficient financial strength.

5. Surety shall be required until such time as reclamation is deemed complete by the Division. The Division shall promptly conduct an inspection when notified by the operator that reclamation is complete. The full release of surety shall be evidence that the operator has reclaimed as required by the Act.

6. Adjustments or revisions made in the surety amount shall be in accordance with the terms and conditions outlined in the Reclamation Contract.

R613-004-114. Failure to Reclaim.

If the operator fails or refuses to conduct reclamation as outlined in the approved notice of intention, the Board may, after notice and hearing, order that reclamation be conducted by the Division and that:

1. The costs and expenses of reclamation, together with costs of collection including attorney's fees, be recovered in a civil action brought by the attorney general against the operator in any appropriate court; or,

2. Any surety filed for this purpose be forfeited. With respect to the surety filed with the Division, the Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability. Where surety or a bond has been filed with the Division of State Lands and Forestry or an agency of the federal government, the Board shall notify such agency of the hearing findings, and request that the necessary forfeiture action be taken.

R613-004-115. Confidential Information.

Information provided in the notice of intention relating to the location, size, and nature of the mineral deposit, and marked confidential by the operator, shall be protected as confidential information by the Board and the Division. The information will not be a matter of public record until a written release is received from the operator, or until the notice of intention is terminated.

R613-004-116. Public Notice and Appeals.

1. Public notice will be deemed complete when the following actions have been taken:

   (1.) A description of the disturbed area and the tentative decision to approve or disapprove the notice of intention shall be published by the Division in abbreviated form, one time only, in all newspapers of general circulation published in the county or counties where the land affected is situated, and in a daily newspaper of general circulation in Salt Lake City, Utah.

   (2.) A copy of the abbreviated information and tentative decision shall also be mailed by the Division to the zoning authority of the county or counties in which the land affected is situated and to the owner or owners of record of the land affected, as described in the notice of intention.

2. Any person or agency aggrieved by the tentative decision may file a written protest with the Division, during the public comment period identified in the notice, setting forth factual reasons for the complaint.

3. If no responsive written protests are received by the Division within 30 days after the last date of publication, the tentative decision of the Division on the notice of intention shall be final and the operator will be so notified.

4. If written objections of substance are received by the Division during the public comment period, a hearing shall be held before the Board in accordance with UCA 40-8-9, following which hearing the Board shall issue its decision.

R613-004-117. Notification of Suspension or Termination of Operations.

1. The operator need not notify the Division of the temporary suspension of mining operations.

2. In the case of a termination or a suspension of mining operations that has exceeded, or is expected to exceed two (2) years, the operator shall, upon request, furnish the Division with such data as it may require to evaluate the status of the mining operation, the status of compliance with these rules, and the probable future status of the land affected. Upon review of such data, the Division will take such action as may be appropriate. The Division may grant an extended suspension period if warranted.

3. The operator shall give the Division prompt written notice a termination or suspension of large mining operations expected to exceed five (5) years. Upon receipt of notification, the Division shall, within 30 days, make an inspection of the property.

4. Large mining operations that have been approved for an extended suspension period will be reevaluated on a regular basis. Additional interim reclamation or stabilization measures may be required in order for a large mining operation to remain in a continued state of suspension. Reclamation of a large mining operation may be required after five (5) years of continued suspension. The Division will require complete reclamation of the mine site when the suspension period exceeds 10 years, unless the operator appeals to the Board prior to the expiration of said 10-year period for a longer suspension period.

R613-004-118. Revisions.

1. In order to revise a notice of intention, an operator shall file a Notice of Intention to Revise Large Mining Operations (FORM MR-REV). This notice of intention will include all information concerning the revision that would have been required in the original notice of intention.

2. A Notice of Intention to Revise Large Mining Operations (FORM MR-REV) will be processed and considered for approval by the Division in the same manner as an original notice of intention. The operator will be authorized and bound by the requirements of the existing approved notice until the revision is acted upon and any revised surety requirements are satisfied. Those portions of the approved notice of intention not subject to the revision will not be subject to review under this provision.

3. Large mining operations which have a disturbed area of five (5) acres or less may refile as a small mining operation. Reclaimed areas must meet full bond release requirements before they can be excluded from the disturbed acreage.

R613-004-119. Amendments.

1. An amendment is an insignificant change to the approved notice of intention. The Division will review the change and make the determination of significance on a case-by-case basis.

2. A request for an amendment should be filed on the Notice of Intention to Revise Large Mining Operations (FORM MR-REV). An amendment of a large mining operation requires Division approval but does not require public notice.

R613-004-120. Transfer of Notice of Intention.

If an operator wishes to transfer a mining operation to another party, an application for Transfer of Notice of Intention - Large Mining Operations (FORM MR-TRL), must be completed and filed with the Division. The new mine operator will be required to post a new reclamation surety and must assume full responsibility for continued mining operations and reclamation.

R613-004-121. Reports.

1. On or before January 31 of each year, unless waived in writing by the Division, each operator conducting large mining operations must file an Annual Report of Mining Operations (FORM MR-AR) describing its operations during the preceding calendar year. Form MR-AR, includes:

   1.11. The location of the operation and file number of the approved notice of intention;

   1.12. The gross amounts of ore and waste materials moved during the year, as well as the disposition of such materials;

   1.13. The reclamation work performed during the year and new surface disturbances created during the year.

2. The operator shall include an updated map depicting surface disturbance and reclamation performed during the year, prepared in accordance with Rule R613-004-105.

3. The operator shall keep and maintain timely records relating to his performance under the Act, and shall make these records available to the Division upon request.

R613-004-122. Practices and Procedures; Appeals.

The Administrative Procedures, as outlined in the R613-005 Rules, shall be applicable to minerals regulatory proceedings.

KEY: Minerals reclamation 40-8-1
1988 et seq

MINERALS RECLAMATION PROGRAM

R613-005- ADMINISTRATIVE PROCEDURES

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R613-005 ADMINISTRATIVE PROCEDURES

R613-005-101. Formal and Informal Proceeding.

1. Adjudicative proceedings which shall commence formally before the Board in accordance with the rules of Practice and Procedure before the Board of Oil, Gas and Mining include the following: R614-002-112, Failure to Reclaim, Forfeiture of Surety; R613-003-111, Failure to Reclaim, Forfeiture of Surety; R613-003-112.5, Over 10-Year Suspension; R613-004-114, Failure to Reclaim, R613-004-117.5, Over 10-Year Suspension,

2. Adjudicative proceedings which shall commence informally before the Division in accordance with this Rule R613-005 include the following: R613-002-101, Notice of Intent to Commence Mining Operations, Variance Request; R613-002-102, Extension; R613-002-107, Variance; R613-002-108, Unplugged Over 30 Days/Alternative Plan; R613-002-109, Reclamation Practices Variance; R613-002-109.13, Revegetation Approval; R613-002-110, Variance, Revocation or Adjustment of Variance; R613-002-111, Release of Surety; R613-002-114, New or Revised Notice of Intention; R613-003-101, Notice of Intention to Commence Small Mining Operations, Variance Requests; R613-003-107, Variances; R613-003-108, Unplugged over 30 Days/Alternate Plan; R613-003-109, Reclamation Practices Variance; R613-003-109.13, Revegetation Approval; R613-003-110, Variance, Revocation, or Adjustment of Variance; R613-003-112, Waiver, Annual Report; R613-003-112.3 and R613-003-112.4, Termination or Suspension; R613-003-112.5, Reevaluations, Reclamation; R613-003-113, Mine Enlargement; R613-003-114, Amendments; R613-003-116, Report Waiver; R613-004-101, Notice of Intention to Commence Large Mining Operation, Variance Request; R613-004-102, Updated Information or Modifications; R613-004-107, Variances; R613-004-108, Unplugged over 30 Days/ Alternate Plan; R613-004-111, Reclamation Practice, Variance; R613-004-111.13, Revegetation Approval; R613-004-112, Variances, Revocation or Adjustment; R613-004-113, Release of Surety; R613-004-117, Annual Report, Waiver; R613-004-117.3 and R613-004-117.4, Termination or Suspension; R613-004-117.5, Reevaluations, Reclamation; R613-004-118, Revisions; R613-004-119, Amendments; R613-004-121, Annual Report, Waiver.

3. Adjudicative proceedings which shall commence before the Board but follow the procedures for the informal process in this Rule R613-005 include the following: R613-002-111, Surety, Form and Amount; and R613-004-113, Surety, Form and Amount.

R613-005-102. Informal Process.

Adjudicative proceedings declared by these rules hereinabove to commence in the informal phase shall be processed according to Rule R613-005 et seq. below. All other requirements of the Mineral Rules shall apply when they supplement these rules governing the informal phase and when not in conflict with any of the rules of R613-005. Notwithstanding this, any longer time periods provided for in the Mineral Rules shall apply.

R613-005-103. Definitions.

Definitions as used in these rules may be found under R613-001-106.

R613-005-104. Commencement of Adjudicative Proceedings.

1. Except for emergency orders described further in these rules, all adjudicative proceedings that commence in the informal phase shall be commenced by either:

   1.11. A Notice of Agency Action, if proceedings are commenced by the Board or Division; or

   1.12. A Request for Agency Action, if proceedings are commenced by persons other than the Board or Division.

2. A Notice of Agency Action shall be filed and served according to the following requirements:

   2.11. The Notice of Agency Action shall be in writing and shall be signed on behalf of the Board if the proceedings are commenced by the Board, or by or on behalf of the Division Director if the proceedings are commenced by the Division. A Notice shall include:

      2.11.111 The names and mailing addresses of all persons to whom notice is being given by the Board or Division, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the Board or Division;

      2.11.112 The Division's file number or other reference number;

      2.11.113 The name of the adjudicative proceeding;

      2.11.114 The date that the Notice of Agency Action was mailed;

      2.11.115 A statement that the adjudicative proceeding is to be conducted informally according to the provisions of these Rules and Sections 63-46b-4 and 63-46b-5 of the Utah Code Annotated (1953, as amended), if applicable;

      2.11.116 A statement that the parties may request an informal hearing before the Division within ten (10) days of the date of mailing or publication and that failure to make such a request for hearing may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

      2.11.117 A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

      2.11.118 The name, title, mailing address, and telephone number of the Division Director; and

      2.11.119 A statement of the purpose of the adjudicative proceeding and, to the extent known by the Division Director, the questions to be decided.

2.12. Unless waived, the Division shall:

2.12.111 Mail the Notice of Agency Action to each party and any other person who has a right to notice under statute or rule; and

2.12.112 Publish the Notice of Agency Action if required by statute or by the Mineral Rules.

2.13. All the listed adjudicative processes that commence informally may be petitioned for by a person other than the Division or Board. That person's Request for Agency Action shall be in writing and signed by the person invoking the jurisdiction of the Division or by his or her attorney, and shall include:

2.13.111 The names and addresses of all persons to whom a copy of the Request for Agency Action is being sent;

2.13.112 A space for the Division's file number or other reference number;

2.13.113 Certificate of mailing of the Request for Agency Action;

2.13.114 A statement of the legal authority and jurisdiction under which Division action is requested;

2.13.115 A statement of the relief or action sought from the Division; and

2.13.116 A statement of the facts and reasons forming the basis for relief or action.

2.14. The person requesting the Division action shall use the forms of the Division with the additional information required by Rule R613-005-104.2.13 above. The Division is hereby authorized to codify said forms in conformance with this rule. Said forms shall be deemed a Request for Agency Action. The person requesting agency action shall file the request with the Division and shall, unless waived, send a copy by mail to each person known to have a direct interest in the requested agency action.

2.15. In the case of a Request for Agency Action, the Division shall, unless waived, insure that notice by mail has been promptly given to all parties, or by publication when required by statute or the Mineral Rules. The written notice shall:

2.15.111 Give the Division's file number or other reference number;

2.15.112 Give the name of the proceeding;

2.15.113 Designate that the proceeding is to be conducted informally according to the provisions of these Rules and Section 63-46b-4 and 63-46b-5 of Utah Code Annotated (1953, as amended), if applicable;

2.15.114 A statement that the parties may request an informal hearing before the Division within ten (10) days of the date of mailing or publication and that failure to make such a request may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

2.15.115 Give the name, title, mailing address, and telephone number of the Division Director; and

2.15.116 If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the Division may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

R613-005-105. Conversion of Informal to Formal Phase.

1. Any time before a final order is issued in any adjudicative proceeding before the Division, the Division Director may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

   1.11. Conversion of the proceeding is in the public interest; and

   1.12. Conversion of the proceeding does not unfairly prejudice the rights of any party.

2. An adjudicative proceeding which commences informally shall also be processed formally if an appeal to the Board is filed under the rules hereinbelow. Such an appeal changes the character of the adjudicative process to a contested case which requires a formal hearing process before the Board or its designated Hearing Examiner to best protect the interests of the public as well as the parties involved.

R613-005-106. Procedures for Informal Phase.

1. A Request for Agency Action or Notice of Agency Action shall be the method of commencement of an adjudicative process as previously discussed in these rules.

2. The mailing requirements of Rule R613-005-104(b)(2)(i) and R6T3-005-104(b)(4), whichever is applicable, shall be met.

3. The Notice of Agency Action shall be published in a newspaper of general circulation likely to give notice to interested persons when required by statute or by these Mineral Rules.

4. All notices required herein shall indicate the date of publication or mailing and specify that any affected person may file with the Division within ten (10) days of said date, a written objection and request for informal hearing before the Division and that failure to make such a request may preclude that person from further participation, appeal or judicial review in regard to the subject adjudicative proceeding. Said ten (10) day period shall be waived if the Division receives a waiver signed by those entitled to notice under these rules.

5. In any hearing, the parties named in the Notice of Agency Action or in the Request for Agency action shall be permitted to testify, present evidence, and comment on the issues.

6. Hearings will be held only after timely notice to all parties.

7. Discovery is prohibited, but the Division Director may issue subpoenas or other orders to compel production of necessary evidence.

8. All parties shall have access to information contained in the Division's files and to all materials and information gathered in by investigation, or to the extent permitted by law.

9. Intervention is prohibited, except where required by federal statute or rule.

10. All hearings shall be open to all parties.

11. Within a reasonable time after the close of the hearing, or after the parties' failure to request a hearing within said ten (10) day period, the Division Director shall issue a written, signed order that states the following:

    11.11 The decision;

    11.12 The reasons for the decision;

    11.13. A notice of the right to appeal to the Board; and

    11.14. The time limits for filing an appeal.

12. The Division Director's order shall be based on the facts appearing in the Division's files and on the facts presented in evidence at any hearings.

13. Unless waived, a copy of the Division Director's order shall be promptly mailed to each of the parties.

14. The Division may record any hearing. Any party, at his or her own expense, may have a reporter approved by the Division prepare a transcript from the Division's record of the hearing.

15. Nothing in this section restricts or precludes any investigative right or power given to the Division by another statute.

16. Default. The Division Director may enter an order of default against a party if the party fails to participate in the adjudicative proceeding. The order of default shall include a statement of the grounds for default and shall be mailed to all parties. A defaulted party may seek to have the Division Director set aside the default order and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. After issuing the order of default, the Division shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in

the adjudicative proceeding, including those affecting the defaulting party. Notwithstanding this, in an adjudicative proceeding that has no parties other than the Division and the party in default, the Division Director shall, after issuing the order of default, dismiss the proceeding.

17. Appeal of Division Order. Any aggrieved party that participated at a hearing before the Division or an applicant who is aggrieved by a denial or approval with conditions, may file a written appeal to the Board within ten (10) days of the issuance of the order. The written appeal shall be in the form of a Request for Agency Action for a formal hearing before the Board or its designated Hearing Examiner in conformance with the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, and shall also state the grounds for the appeal and the relief requested.

18. Emergency Orders. Notwithstanding the other provisions of these rules, the Division Director or any member of the Board is authorized to issue an emergency order without notice and hearing in accordance with applicable law. The emergency order shall remain in effect no longer than until the next regular meeting of the Board, or such shorter period of time as shall be prescribed by statute.

18.11. Prerequisites for Emergency Order. The following must exist to allow an emergency order:

18.11.111 The facts known to the Division Director or Board member or presented to the Division Director or Board member show that an immediate and significant danger of waste or other danger to the public health, safety, or welfare exists; and

18.11.112 The threat requires immediate action by the Division Director or Board member.

18.12. Limitations. In issuing its Emergency Order, the Division Director or Board member shall:

18.12.111 Limit its order to require only the action necessary to prevent or avoid the dange to the public health, safety, or welfare;

18.12.112 Issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the Division Director's or Board member's utilization of emergency adjudicative proceedings;

18.12.113 Give immediate notice to the persons who are required to comply with the order; and

18.12.114 If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the Division shall commence a formal adjudicative proceeding before the Board of Oil, Gas and Mining.

R613-005-107. Exhaustion of Administrative Remedies.

1. Persons must exhaust their administrative remedies in accordance with Section 63-46b-14, Utah Code Annotated (1953, as amended), prior to seeking judicial review.

2. In any informal proceeding before the Division, there is an opportunity given to request an informal hearing before the Division. If a timely request is made, the Division will conduct an informal hearing and issue a decision thereafter. Only those aggrieved parties that participated in any hearing or an applicant who is aggrieved by a denial or an approval with conditions will than be entitled to appeal such Division decision to the Board within ten (10) days of issuance of the Division order. Such appeal shall be treated as a contested case which is processed as a formal proceeding under the Rules of Practice and Procedure before the Board of Oil, Gas and Mining. Such rights to request an informal hearing before the Division or to appeal the Division order and have the matter be cor ted and processed formally are available and adequate administrative remedies and should be exercised prior to seeking judicial review.

R613-005-108. Waivers.

Notwithstanding any other provision of these rules, any procedural matter, including any right to notice or hearing, may be waived by the affected person(s) by a signed, written waiver in a form acceptable to the Division.

R613-005-109. Severability.

In the event that any provision, section, subsection or phrase of these rules is determined by a court or body of competent jurisdiction to be invalid, unconstitutional, or unenforceable, other remaining provisions, sections, subsections or phrases shall remain in full force and effect.

R613-005-110. Construction.

The Utah Administrative Procedures Act described in Title 63, Chapter 46b of the Utah Code Annotated (1953, as amended) shall supersede any conflicting provision of these rules. These rules should be construed to be in compliance with said Act.

R613-005-111. Time Periods.

Nothing in these rules may be interpreted to restrict the Division Director, for good cause shown, from lengthening or shortening any time period prescribed herein.

KEY: Minerals reclamation 40-8-1
1988 et seq

ATTACHMENT C
Summary of the Wyoming DEQ-LQD Proposed Bond Pool, DRAFT

DRAFT
(3/31/88)

Summary of the Wyoming DEQ-LQD Proposed Bond Pool

A. INTRODUCTION

This summary is intended to familiarize interested parties with the Department of Environmental Quality - Land Quality Division's proposed Bond Pool Program for meeting the bonding requirements as set forth in W.S. 35-11-417.

Over the last few years the Land Quality Division has noticed the increased difficulty mining operators have had in obtaining reclamation performance bonds. At the present time, most operators must post 100% liquid collateral for any surety bond or bank letter of credit that is obtained for use as a reclamation bond. The practice of requiring this collateral by insurance companies and banks has put a financial burden on many of the state's small mine operators. To reduce the burden on these operators, the LQD proposes to set up a Bond Pool program in which operators could participate to meet our bonding requirements.

The Bond Pool concept works much like an insurance policy where the operator would pay an annual fee to the pool and in turn the pool reserves will cover the operator's bonding liability. It should be noted that the Bond Pool program is an alternate form of bonding such as a surety or a self bond, and the operator is free to go from one method of bonding to another at any time.

The Bond Pool program would be available to all operators with coal permits, large mining permits, small mining permits, ten-acre exemptions, licences to explore, coal notifications and drilling notifications with a total bonding liability of $50,000 or less. The $50,000 ceiling is explained below and may be raised in the future if the program can generate enough revenue to cover the larger bonds.

B. PROGRAM SET UP & OPERATION

1. BOND AMOUNTS & DISTRIBUTION -

A study of current bonding distribution was conducted in order to determine the maximum allowable bond that would keep a single operation from bankrupting the pool and still allow the maximum number of participants.

Table 1 on Page 3 shows the LQD's total bond distribution as of March 4, 1988. The distribution shows that most of the dollars held for bonds are in the upper ($5 mil to $100 mil) bond ranges, while the majority of the permitted operators are in the lower bond ranges. Since the intention of the pool is to help as many operators as possible, the number of permits in certain bond ranges were studied rather than the total dollar amount held in any range.

If you plot the number of permits versus the bond amounts in a line graph form, as in Figure 1 on Page 4, you can see that the majority of the permits bonded are for amounts of less than $50,000. All bond ranges of over $50,000, as shown in Table 1, contain less than 2% of the total bonding volume. Cumulatively, permits with bonds between $0 and $50,000 represent 83% of the total LQD bonded operators as shown in the pie graph of Figure 2 on Page 5.

In order to include the maximum number of operators in the state and maintain a ceiling that would not bankrupt the pool, should the largest operator forfeit, a bonding limit of $50,000 was set for the program.

2. FEE REQUIREMENTS -

In order to determine what yearly member fees would be required to pay for reclamation due to forfeitures, actual LQD bond forfeitures were compiled for the last six years. Table 2 on Page 6 shows bond fofeiture numbers and amounts for the years of 1982 through 1987 for bonds of $50,000 or less.

The average annual statewide bond forfeiture total for the last six years was $22,460. The current total dollar amount held for bonds under $50,000 is $4,337,000. To determine what an average percent of forfeiture would be each year, you divide $22,460 by $4,337,000 and you get 0.5%. This is an actuarial figure which should be correct regardless of how many participants the pool has. Since bond requirements are not based on estimated reclamation costs for ten acre exemptions, 0.5% would not be adequate to cover forfeitures if a large amount of ten acre exemptions were to forfeit in any one year. If the 0.5% is accelerated to 3% the state would be given a factor of safety of five. This should enable the state to cover the loss in any given year.

In order to recover the projected 3% loss each year, the participants of the pool must pay a yearly 3% premium on their current bond estimate. In addition, the participants must post a one-time deposit equal to 10% of their bond estimate with the Department to be held until the permit is terminated. As an example, the operator with a $3,000 bond would post a $300 deposit and pay a yearly fee of $90.00. If the operator's bond estimate should increase any time during the life of his operation, the operator would be required to increase his 10% deposit and his yearly fee accordingly. Further examples of fee calculations are shown on Page 8.

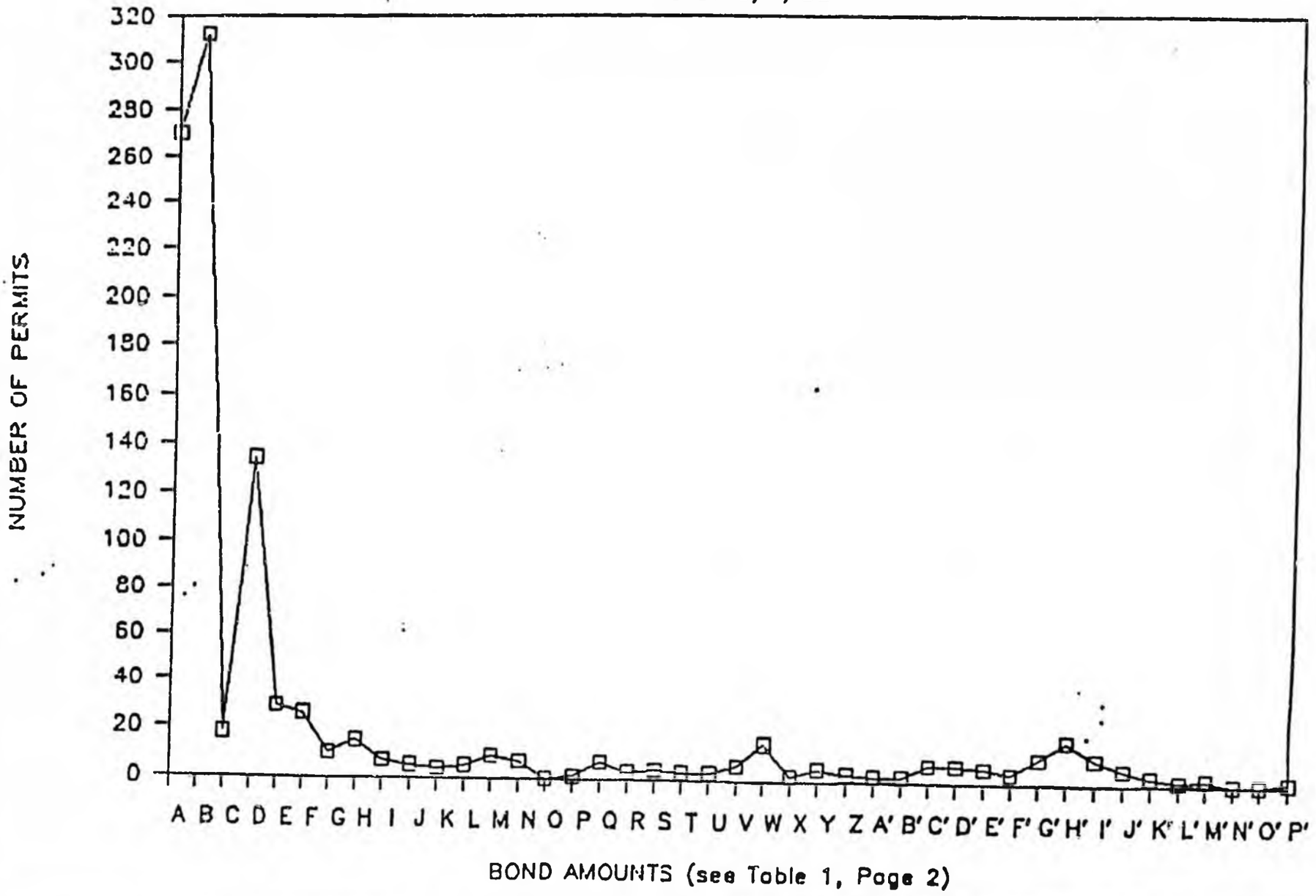
With the current 100% collateral requirement, Table 1, page 3, shows approximately $4,000,000 is tied up in cash bonds or as collateral for Surety Bonds and Letters of Credit. Under the fee requirements of the bond pool, each participating operator would get up to 90% of their tied-up capital released for use elsewhere.

TABLE 1
LQD PERMIT/BOND SUMMARY AS OF 3/4/88

LEGEND	BOND AMOUNT $ X 1000	NUMBER OF PERMITS IN RANGE	% OF PERMITS IN RANGE	TOTAL $ AMT. OF BONDS IN RANGE	% OF TOTAL $ AMT. FOR ALL BONDS
A	0-1	271	28.11	179261	0.01
B	1-3	311	31.73	656215	0.04
C	3-5	18	1.84	78259	0.00
D	5-10	131	13.37	1274777	0.08
E	10-20	29	2.96	455830	0.03
F	20-30	26	2.65	658683	0.04
G	30-40	10	1.02	366188	0.02
H	40-50	14	1.43	660867	0.04
I	50-60	7	0.71	392476	0.03
J	60-70	5	0.51	321284	0.02
K	70-80	4	0.41	301082	0.02
L	80-90	5	0.51	434319	0.03
M	90-100	9	0.92	900000	0.06
N	100-125	8	0.82	863685	0.06
O	125-150	0	0.00	0	0.00
P	150-175	1	0.10	157000	0.01
Q	175-200	6	0.61	1168862	0.07
R	200-225	3	0.31	851539	0.05
S	225-250	4	0.41	748499	0.05
T	250-275	2	0.20	534408	0.03
U	275-300	3	0.31	877140	0.06
V	300-400	6	0.61	2213875	0.14
W	400-500	15	1.53	7014082	0.45
X	500-600	2	0.20	1059000	0.07
Y	600-700	3	0.31	1995000	0.13
Z	700-800	3	0.31	3069421	0.20
A'	800-900	1	0.10	875000	0.06
B'	900-1000	2	0.20	1989566	0.13
C'	1000-2000	7	0.71	9177264	0.59
D'	2000-3000	7	0.71	17428373	1.11
E'	3000-4000	4	0.41	13907491	0.89
F'	4000-5000	3	0.31	13336200	0.85
G'	5000-10000	9	0.92	109777295	7.01
H'	10000-20000	14	1.43	322974451	20.61
I'	20000-30000	10	1.02	498556146	31.81
J'	30000-40000	4	0.41	131835752	8.41
K'	40000-50000	3	0.31	132532080	8.46
L'	50000-60000	1	0.10	58145486	3.71
M'	60000-70000	2	0.20	130444173	8.32
N'	70000-80000	0	0.00	0	0.00
O'	80000-90000	0	0.00	0	0.00
P'	90000-100000	1	0.10	98900000	6.31
		964	98.82	1567111029	100

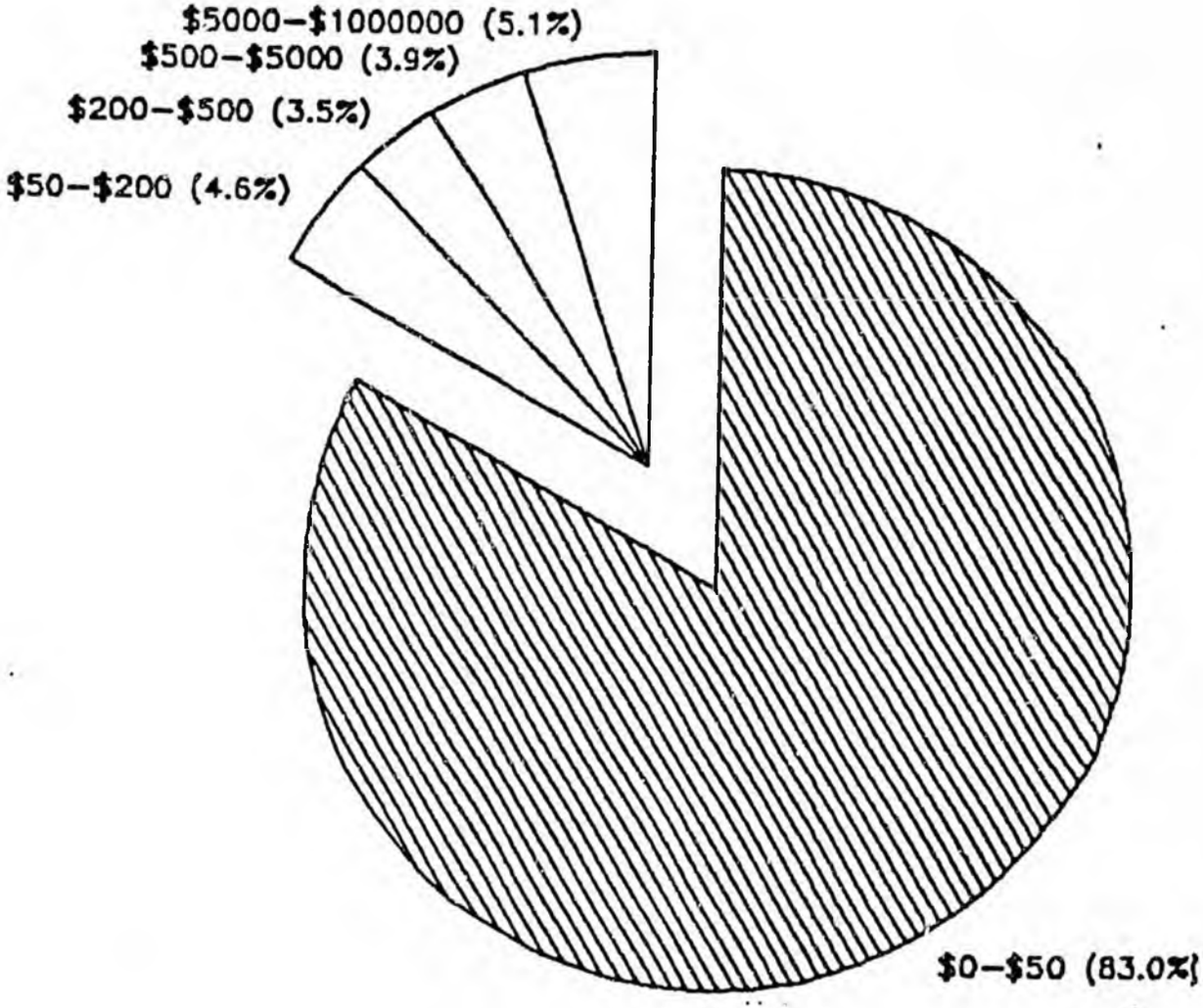
LQD PERMIT/BOND SUMMARY

AS OF 3/4/88



LQD PERMIT/BOND SUMMARY

AS OF 3/4/88



BOND RANGE DOLLARS IN THOUSANDS

Percentage points represent operator's in each bond range.

TABLE 2

YEAR	NUMBER OF BONDS FORFEITED	TOTAL AMOUNT OF BONDS
1982	5	$16,984
1983	4	$22,400
1984	4	$17,879
1985	7	$53,500 **
1986	8	$ 6,219
1987	11	$17,775
	$\bar{X}$ =	$22,460

** One bond amounted to $41,000 of this total

3. RELEASE OF BONDS -

The 10% deposit will be held by the State from the time of permit approval until successful revegetation has been established and the permit is terminated. The 3% yearly fee will be assessed from the time of permit approval until final seeding has been completed, at which time it will be suspended. Only the 10% deposit will be held between seeding and successful revegetation. This is equivalent to releasing 90% of the operator's bond at the time of seeding.

4. BOND FORFEITURES -

If a pool member's bond is forfeited under the provisions of W.S. 35-11-421, the LQD will take the operator's 10% deposit plus the necessary pool funds and complete the reclamation. The State would have the option of suing the operator if the cost of reclamation exceeded the estimated costs, as is presently the case. Should a member stop paying his annual fees, he will be suspended from the pool, lose his 10% deposit, and will be required to obtain a different form of bonding immediately. If the operator does not obtain an alternate bond and the State is forced to reclaim the operation, the operator could be sued for the cost of the reclamation. This will be viewed as forfeiture of bond and the operator will not be allowed to repermit in the State.

5. FEE CHANGES -

Each year an actuarial study will be carried out to determine if yearly fees are adequate to maintain the pool or if they should be raised or lowered. It is possible that when an upper limit (perhaps $1.5 million) is reached in the pool fund, the yearly fees could be waived for those members who have been in the program for some time or the $50,000 ceiling could be raised to allow more pool participants. A board or panel may be needed to make the fee schedule and pool limit decisions. If this proves to be the case, either the Environmental Quality Council, the Land Quality Advisory Board, or a new bond pool board could be given rule making authority and used for this purpose.

6. STARTING THE POOL -

In order to get the Bond Pool program up and running, a grant of $100,000 from the DEQ's Trust in Agency account would be needed. This grant would protect the pool from being depleted before it could build up its own reserves. Use of the Trust in Agency money is justified since the money would only be used for bond forfeitures on which adequate pool funds were not available. Funds borrowed from the Trust in Agnecy account would be repaid when the bond pool is actuarialy stable.

7. HOW PAYMENTS ARE MADE -

As with any other form of bonding, the operator would be required to have the appropriate bond in-place prior to affecting any land. With a new permit application, the operator would put up the appropriate 10% deposit and pay the 3% annual premium. An evaluation of the bond would be made every year upon receipt of the annual report. The Department would advise the operator to post a 10% deposit for any new lands which are projected to be affected during the coming year and to pay the 3% annual premium. No new lands could be affected until the appropriate deposits and fees were paid.

Figure 3
Example Calculations for Bond Pool Payments

Example for Small Mining Permit

Initial Application - Projects 10 acres of disturbance 1st year @ estimated reclamation cost of $1,000 per acre

10% deposit = $1,000
3% annual premium = $300

1st Annual Report - Projects additional 5 acres of disturbance (total 15 ac.).

10% deposit = $500 (in addition to $1,000 already on deposit)
3% annual premium = $450 (15 acres)

2nd Annual Report - Projects additional 5 acres of disturbance (total 20 ac.). Also reports 5 acres have been seeded.

10% deposit = $500 (in addition to $1,500 already on deposit)
3% annual premium = $450 (net 15 acres)

3rd Annual Report - Reports that all lands have been reclaimed.

10% deposit remains at $2,000 (20 acres)
3% annual premium is waived since all lands have been seeded.

5th Annual Report - Reclamation deemed acceptable by DEQ-LQD.

Deposit of $2,000 returned to operator and permit is cancelled.

Example for Ten-Acre Exemptions

Initial Application - Projects 10 acres of disturbance for life of mine.
Bonding set by statute at $300 per acre.

10% deposit = $300
3% annual premium = $90

1st Annual Report - Reports all 10 acres affected.

No additional deposit required.
3% annual premium = $90

2nd Annual Report - Reports all 10 acres reclaimed.

No additional deposit.
Annual premium waived.

4th Annual Report - Reclamation deemed acceptable by DEQ-LQD.

Deposit of $300 returned to operator and permit is cancelled.

8. DEQ MANPOWER REQUIREMENTS -

Existing DEQ financial staff will set up the pool fund and track pay-ins and pay-outs as long as possible. If the pool grows too large for existing staff to handle, another person will be hired and paid with pool proceeds.

9. STATUTORY CHANGES -

A new section will have to be added to the Wyoming Statutes allowing for the Bond Pool and giving the chosen board rule making authority. Regulations will also have to be written for the program's use.

10. COMPLIANCE REQUIREMENTS -

Operators of existing operations must be in compliance with the Wyoming Environmental Quality Act and Land Quality Rules and Regulations and must be current on reclamation to qualify for the pool. The LQD Advisory Board would have the final say on any disputes.

C. SUMMARY

DEQ/LQD is proposing to set up a Bond Pool program for use by mining operators with total bonding liability of $50,000 or less. Requirements of the pool would be a 10% deposit and a 3% yearly premium on the operator's current bond evaluation. The 3% premium will be waived when the operator

completes final seeding. The 10% deposit will be returned upon successful revegetation and permit termination. Should the operator forfeit his bond, he will lose the 10% deposit and the State will be responsible for reclamation of his permit. Fees will be set by a Board, based on a yearly actuarial study of the program's assets.

COMMENTS OF
NEIL MACKINNON, PRESIDENT OF HYAK MINING COMPANY
ON PENDING LEGISLATION
CONCERNING RENTS AND ROYALTIES
FROM MINING OPERATIONS ON STATE LAND

February 28, 1989

- During the past several months I, like virtually everyone associated with the mining industry in Alaska, have spent a considerable amount of time thinking about the issue of rents and royalties from mining operations on state land. The issue has so many facets and interrelationships that it is difficult to distill into a single presentation which will reflect the essence and be understandable in the context of the pending legislation.

Does Alaska want a mining industry?

- The first question to be asked is whether it is the policy of the State of Alaska to develop a mining industry. Historically, this question has been greeted with mixed responses. On the one hand, there are those who acknowledge that mining is a labor intensive industry which will generate revenue and jobs for Alaskans for decades to come, and, because of the rich mineral wealth with which Alaska is blessed, there needs to be no shortage of mines. On the other hand, there are those who associate mining with a variety of negative feelings, believing that mining necessarily involves everything from pollution and visual impacts to a diminution of the quality of life for those who live near mining operations. Until the State acknowledges that mining contributes more than just tax dollars this schizophrenic condition will continue.

Mining means new investment, jobs and tax revenue

- To get a feeling for the ball park we were playing in, look at a hypothetical gold mine in Alaska, the same mine in Nevada, and the same mine in Idaho. To understand the significance of this analysis, it is necessary to start with the premise that *whenever the government puts its hand in the pocket of its citizenry, it is taxation.* It makes little difference whether it is called tax or rent or royalty or fees or anything else. This analysis compares the level of taxation in these three jurisdictions.

- While the analysis merits close study the bottom line is that the State and local tax share today is higher in Alaska than in the other two States. This comparison also does not account for the higher capital and operating costs of doing business in Alaska, nor does it take into account the longer lead time associated with regulation and permitting in Alaska. For instance, in Nevada and Idaho, a Forest Service plan of operations for exploration can be approved within weeks, while in Alaska it frequently takes many months to get approval for routine work associated with mineral exploration.

- The attached enclosure also demonstrates what mining can represent just in terms of new investment, year-round jobs and revenue. In the example of a small mine, the local community would benefit from an local investment of fifteen million new dollars spent on goods and services, a hundred new year-round jobs, and direct revenues in the form of local sales and property taxes of over a million dollars. For a large mine, the effect is even more dramatic. One hundred fifty million dollars of new money would be invested in the State, four hundred primary jobs would be created and over nine million in sales and property taxes would be generated. While such mines will not replace Prudhoe Bay, they represent a revenue potential which the State can ill-afford to ignore or discourage.

Mining makes permanent contributions

- Mining is an intensive use of a small amount of land relative to its economic output. It provides direct and secondary year-round employment in rural areas of the State and constructs the infrastructure and utilities which benefit the citizens long after the mines are worked out. Juneau is a prime example of this fact; its power system was first devised to serve the mines, but in turn came to serve the entire community after the mines closed. Also, mineral development draws additional non-mining support facilities on adjacent lands affording the State the opportunity to gain revenues from that land as well.

Taxation can be a disincentive to investment

- While the citizen obliged to pay taxes is never going to be really happy with the obligation to pay, it is important for legislators to realize that if mining operations are going to generate revenue for the State, the State must set its tax (including rents and royalties) at a level which will encourage mineral investment, so that the industry can get to a point where it can pay the taxes. Alaska cannot attract the risk capital from other areas unless it offers competitive advantages over those areas. We compete with Nevada, Idaho and the rest of the world for this capital. Many of those locations have important natural advantages over Alaska already. By loading up our mines with assessment work, rents, royalties, and license taxes we send a signal that Alaska lands are not worth the cost of exploration. Mines are made not found. They can be easily "unmade" by unrealistic taxation.

Reclamation has no part in this legislation

- Although reclamation was not a part of the court decision in Trustees v. State and therefore not a part of the proposed legislation, its inclusion in this bill is being pushed by the environmentalists. The reasoning is that if the legislature does not address reclamation now, then it never will. Two points must be made in conjunction with this point: First, we

need a rents or royalties bill *now* to satisfy the mandate of the court this year. Second, reclamation is a complex and technical subject, deserving proper consideration on its own merits. Ironically, the State already has ample authority to require reclamation on State land, and it routinely places reclamation requirements in the miscellaneous land use permits which are required in order to mine. To address reclamation in the context of this bill is simply inappropriate.

Technical points relating to the pending proposals

Mineral in Character

- The "mineral in character" definition can be used to solve the least common denominator effect which results from including all State lands under a single rent/royalty system. In order to induce anyone on State land, if a uniform rent or royalty is applied it will have to be set at a level which the most marginal land can support. In other words, rent constitutes a burden on the land inversely proportional to the mineral value of the land. The greater the amount of land which the State wishes to have explored and developed for its mineral values the lower the rent will have to be.

- Although including all lands under one "rental agreement," makes management easier, it necessarily means that the rents and royalties must be set at a level as low as the least productive can bear. If the State truly desires to maximize revenue from mining operations, it would set rents and royalties on the basis of the productivity of the lands involved. This system will require active management on the part of the State. If the State seeks more than a nominal tax, then it must make more than a nominal effort to develop the base that provides that tax. On the other hand, if the State wishes to minimize the administrative costs associated with mining on State land, it should simplye bill claimholders a flat fee per claim and be done with it.

Royalties

- The opinion of the Supreme Court does not require a royalty and rent too. The State already has a mining license tax based on net profits from mining operations that applies to all mines in Alaska regardless of whether the State owns the land or not. Adding an additional tax in the form of a royalty on operations on State land creates a disincentive to produce minerals on State land and diminishes, not increases, the revenue the State will receive. It should be noted that under the administration's proposal, the bulk of the revenue generated would be from rents ($700,000) rather than royalties ($50,000). The additional administrative cost of verifying and collecting the royalty hardly appears to justify the imposition. (Note that the State does almost nothing to enforce the Mining License Tax at this time.) The odds that any given mineral discovery will result in a mine are less than one thousand to one. This fact alone means that there will always be many more claims than producing mines. In Alaska today, although the State controls an area nearly the size of California, there is only one significant producing mine on State land. It is unequivocal that the State will always derive more money from rents than royalties no matter what the rate of taxation.

The proposed royalty scheme is unfair and misdirected

- The proposed legislation has a significant drafting problem inasmuch as it taxes the wrong party. The bill purports to make the claimholder responsible for the payment of the royalty, although in many cases, it is not the claimholder who is producing from the property. The normal experience is for a claimholder to lease his claims to a mining company if he can. Although in the future it will undoubtedly be a part of the boilerplate in mining agreements on State land for the producer to pay the production royalty due the State, such a provision is not generally included in existing mining leases, therefore the claimholder, not

the producer will have to pay the royalty. This would be analogous to requiring the landlord of a commercial building to pay taxes based upon the income of the tenant. It simply is not fair.

- Another curious aspect of the royalty provision is that it requires the minimum royalty to be paid even if the mine is operating at a loss.

- In addition, the minimum royalty rate is set at a level which would result in it taking effect in some circumstances if the profitability of the operation drops below 40%. Very few businesses are lucky enough to achieve such profitability. With this schedule, the State is saying that any mines not making at least a 40% profit will pay more taxes than mines that achieve this level of profit. Stating this proposition otherwise, the tax is regressive in that it charges less tax to highly profitable operations than it does on operations which are less profitable. Hence, one must be able to project at least 40% profitability to justify mining on State land.

Legislation will precipitate further litigation

- Although this legislation was spawned from litigation which disrupted a system of managing State mining claims which has been in place from Statehood, unless some of the more inequitable irregularities are resolved, it will engender a great deal more litigation. There can be no doubt that requiring the claimholder to pay rents and royalties calculated on the basis of occupancy and production of leased ground will result in both tenants and tax collectors being sued. Traditionally, claimholders require the lessee to maintain the claims in good standing during the term of the lease; however, the lessor may not have provided for the collection of rent in his lease, therefore if this bill is enacted the landlord will be obliged to pay the State for claims which he cannot drop and at the same time not be able to derive any revenue from them. The only solution - sue.

Conclusion

- We hope that these comments will be helpful in fashioning a fair statute which responds to the mandate of the Supreme Court. The mining industry in Alaska has an obligation to pay its fair share of taxes, including rents and royalties to the State, but it is important that the State realize that miners are only one of many users of State lands. Our impact in terms of environmental disruption and visual impact has been trivial, but our contribution has been immense. From Quartz Hill to Kotzebue, from Fairbanks to Kennecott, from Nome to Juneau, the history of Alaska has been and will be written in terms of our mining heritage. The great mines of another era our the living monuments to Alaska's past. The highways and trails which now link communities frequently have an old minesite at their end. Whether your are speaking of the Treadwell Ditch or the road to the DeLong Mountains, you are confronted with a contribution by the mining industry to Alaska.

- We in Alaska have an obligation not to kill the goose that lays the golden egg, but to take another gander at how best to bring that industry to life.

ENM:lyn
0228mack

COMPARISON OF TAX STRUCTURES OF A SMALL GOLD MINE IN JUNEAU, ALASKA TO THAT OF NEVADA AND IDAHO

	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%	5.5%	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	449,841	336,960
COMPANY SALES TAXES	93,800	124,958	117,000
STATE & LOCAL GROSS	1,054,741	649,694	1,200,553

COMPARISON OF TAX STRUCTURES OF A LARGE GOLD MINE IN JUNEAU, A
TO THAT OF NEVADA AND IDAHO

	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%	6.0%
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

royalty schedule alaska

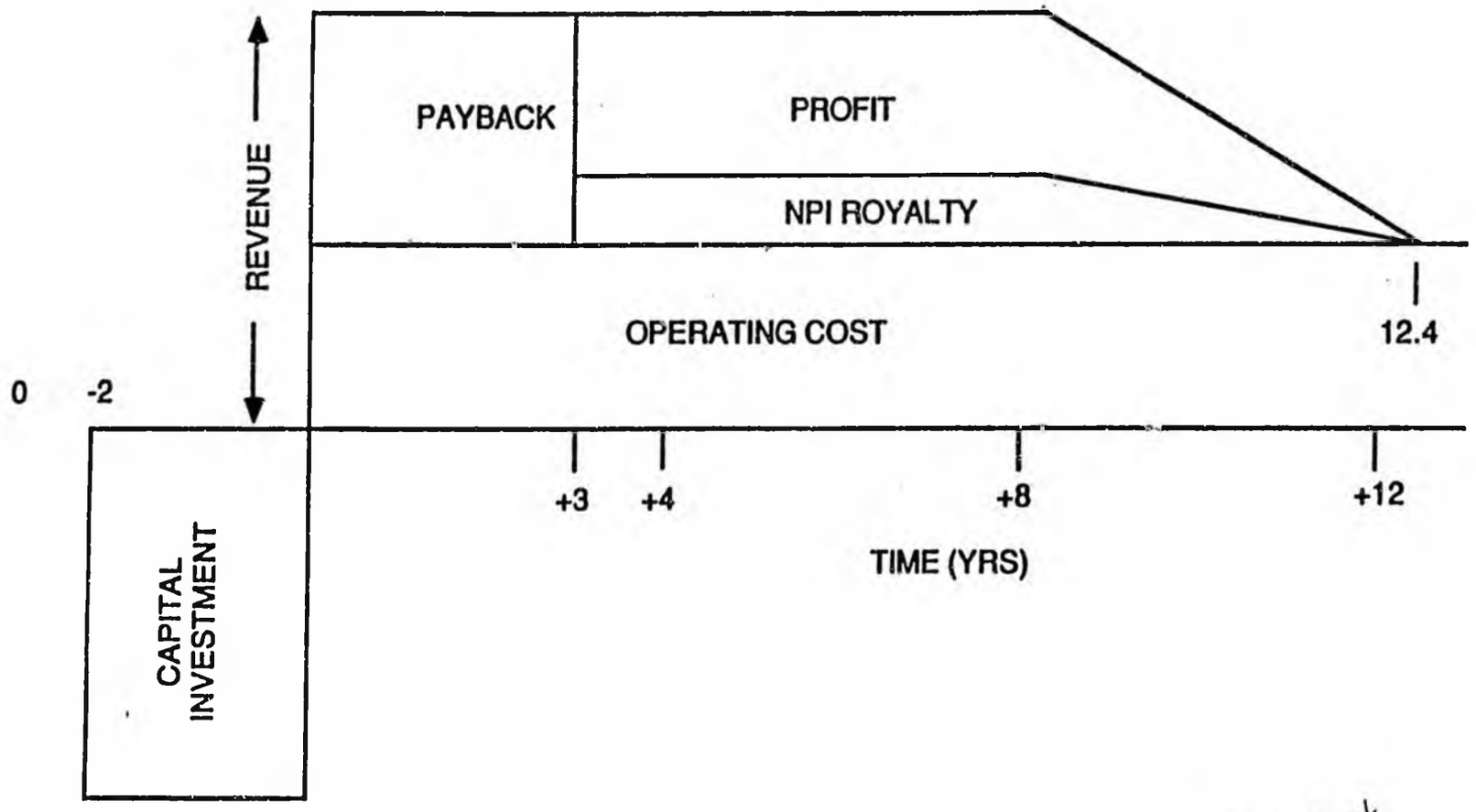
minimum income	maximum income	minimum royalty	net income percent	effective rate on minimum	effective rate on maximum
1	49,999	200	1.0%	20000.0%	0.4%
50,000	99,999	750	2.0%	1.5%	0.8%
100,000	249,999	2,000	2.0%	2.0%	0.8%
250,000	499,999	5,000	2.0%	2.0%	1.0%
500,000	2,499,999	22,500	2.0%	4.5%	0.9%
2,500,000	99,999,999	30,000	1.2%	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
2,000	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

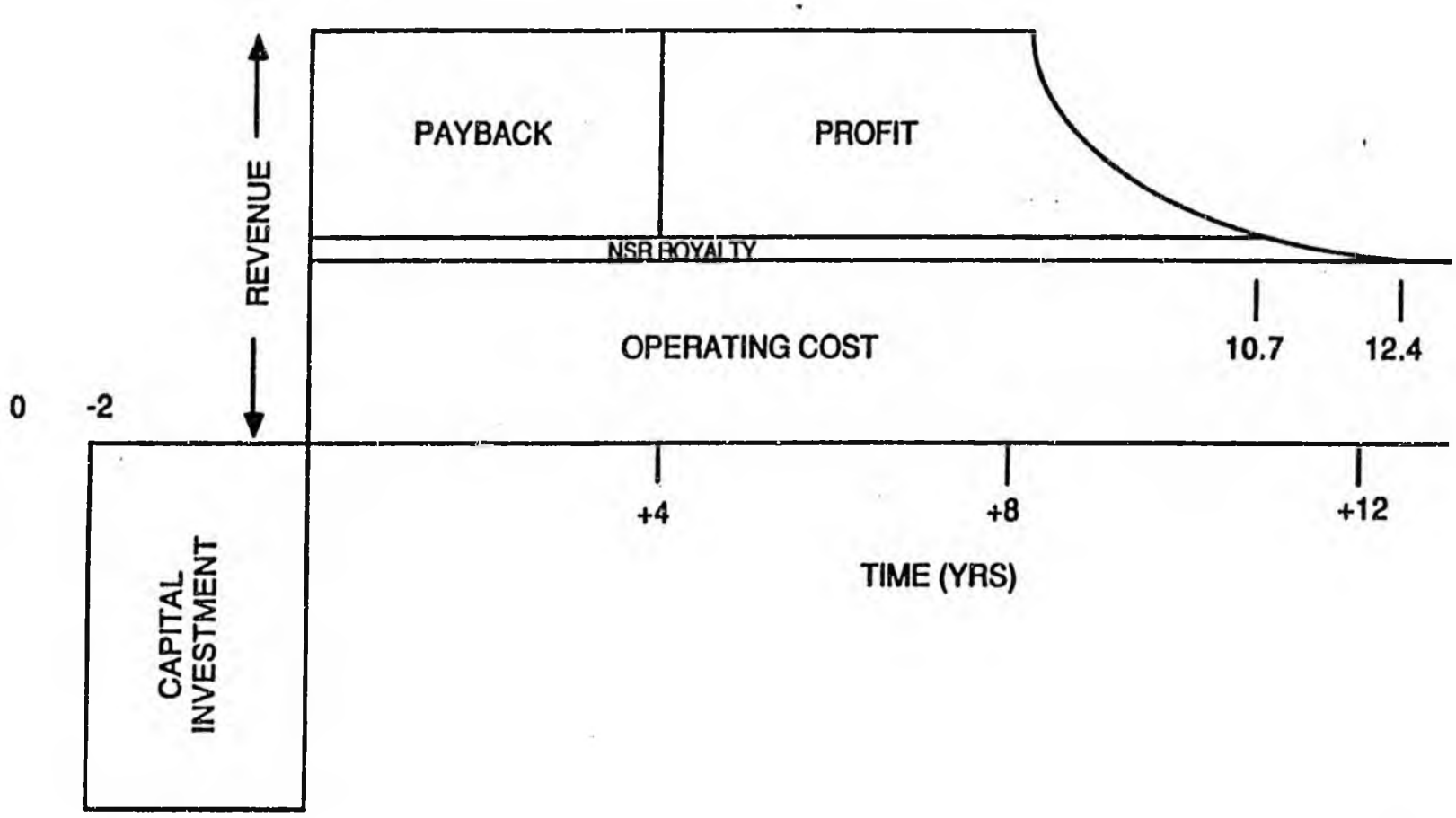
mimimum	maximum
0.0025	125
125	250
250	625
625	1250
1250	6250
6250	24750



DISTRIBUTION OF REVENUES - NPI ROYALTY

Net profit interest

NET OPERATING PROFIT:



DISTRIBUTION OF REVENUES - NSR ROYALTY

NET SMELTER RETURN

Senator John B. (Jack) Coghill
Alaska State Legislature

Box V
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(907) 465-4797

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(907) 488-0862

MEMORANDUM

To: Senator Bettye Fahrenkamp
Senate Resource Committee Chair
and Members of the Senate Resource Committee

From: Senator Jack Coghill

Re: 6(i) Comments for Committee Meeting

Date: February 22, 1989

Due to the technical nature of my comments today before the committee regarding Mineral In Character lands, I have attached a copy of the text for your consideration.

SEN. COGHILL
COMMENTS FOR
SEN. RESOURCES 2/22/89

MINERAL IN CHARACTER

1. THERE IS NO DEFINITION OF "MINERAL IN CHARACTER" IN FEDERAL STATUTES; HOWEVER, OVER THE YEARS THE COURTS HAVE DEFINED IT IN A VARIETY OF WAYS.

2. THE MOST AUTHORITATIVE TEST FOR DETERMINING THE MINERAL CHARACTER OF LAND WAS ANNOUNCED BY THE UNITED STATES SUPREME COURT IN DIAMOND COAL AND COKE v. UNITED STATES IN 1914, AND IT IS STILL USED TODAY. IN THIS CASE THE SUPREME COURT SAID:

"IT MUST APPEAR THAT THE KNOWN CONDITIONS ... WERE PLAINLY SUCH AS TO ENGENDER THE BELIEF THAT THE LAND CONTAINED MINERAL DEPOSITS OF SUCH QUALITY AND QUANTITY AS WOULD RENDER THEIR EXTRACTION PROFITABLE AND JUSTIFY EXPENDITURES TO THAT END."

THIS TEST CONTINUES TO BE QUOTED IN NUMEROUS FEDERAL COURT CASES AND INTERIOR DEPARTMENT ADMINISTRATIVE ACTIONS.

IT IS CLEAR THAT THE STATE SUPREME COURT HAD THIS IN MIND WHEN IT STATED WE WERE IN VIOLATION OF 6(i) BECAUSE WE DIDN'T "REQUIRE THE PAYMENT OF RENTS OR ROYALTIES FROM STATE LANDS WHOSE MINERAL CHARACTER WAS KNOWN AT THE TIME OF STATE SELECTION."

3. THE STATE SUPREME COURT FURTHER DIRECTED US TO ESTABLISH A LEASING SYSTEM WHICH INCLUDES "SOME PROCESS FOR DETERMINING

WHICH LANDS WERE OF KNOWN MINERAL CHARACTER AT THE TIME OF SELECTION AND" MUST INCLUDE PAYMENT OF RENTS OR ROYALTIES "FOR THE EXTRACTION OF MINERAL DEPOSITS FROM SUCH LANDS."

SB 161 PROVIDES ALL THE MECHANISMS TO FULLY COMPLY WITH THE COURTS DECISION WITHOUT JEOPARDIZING THE COMPETITIVE POSITION OF STATE LANDS TO FEDERAL OR PRIVATE LANDS.

4. NOW, HOW DO WE MAKE THE MINERAL CHARACTER DETERMINATION? THE PROCESS IN SB 161 IS THIS. EXISTING CLAIM HOLDERS HAVE 3 YEARS TO MAKE APPLICATION TO THE COMMISSIONER FOR A DETERMINATION, AND NEW CLAIMANTS HAVE ONE YEAR FROM THE DATE THEY FILE THE CLAIM. THE COMMISSIONER HAS 3 YEARS FROM THE DATE OF THE APPLICATION TO DETERMINE IF THE LAND WAS MINERAL IN CHARACTER AT THE DATE OF STATE SELECTION.

IN THE FEDERAL SYSTEM, THE DEFINITION AND EVIDENCE NEEDED TO MAKE A MINERAL IN CHARACTER DETERMINATION IS THIS:

"IT IS NOT ESSENTIAL THAT THERE BE AN ACTUAL DISCOVERY OF MINERAL ON THE LAND. IT IS SUFFICIENT TO SHOW ONLY THAT KNOWN CONDITIONS ARE SUCH AS REASONABLE TO ENGENDER THE BELIEF THAT THE LAND CONTAINS MINERAL OF SUCH QUALITY AND IN SUCH QUANTITY AS TO RENDER ITS EXTRACTION PROFITABLE AND JUSTIFY EXPENDITURES TO THAT END. SUCH BELIEVE MAY BE PREDICATED UPON GEOLOGICAL CONDITIONS, DISCOVERIES OF MINERALS IN ADJACENT LAND AND OTHER OBSERVABLE EXTERNAL CONDITIONS UPON WHICH

PRUDENT AND EXPERIENCED MEN ARE SHOWN TO BE ACCUSTOMED TO ACT."

IF YOU WILL CAREFULLY READ SECTION 5 OF SB 161, YOU WILL FIND IT CONTAINS ALL OF THE ELEMENTS OF THIS FEDERAL DEFINITION.

THIS DEFINITION AND SB 161'S PROCESS IS FULLY SUPPORTED BY SEVERAL IMPORTANT FEDERAL CASES, NOTABLY:

DIAMOND COAL & COKE CO. v. U.S., 233 US 236, 248-249 (1914)

U.S. v. SOUTHERN PACIFIC CO., 251 US 1, 14 (1919)

LADEN v. ANDRUS, 595 F2d 482, 489-490 (9th Cir 1979)

U.S. v. SOUTHERN PACIFIC TRANSPORTATION CO., 66 IBLA 191, 195 (1982)

THE SIGNIFICANCE OF THESE CASES IS THAT THEY ALL AGREE THAT AN ACTUAL DISCOVERY OF MINERALS WITHIN A TRACT OF LAND IS NOT REQUIRED AND THAT THE FOLLOWING TYPES OF EVIDENCE SUPPORT A DETERMINATION OF MINERAL IN CHARACTER.

1. DISCOVERIES OR MINES IN ADJACENT LAND;

2. OTHER EXTERNAL CONDITIONS THAT CAUSE PRUDENT AND EXPERIENCES MEN TO ACT AND MAKE EXPENDITURES; AND

3. FAVORABLE GEOLOGICAL CONDITIONS WITHIN THE TRACT.

5. SO FAR AS SB 161 IS CONCERNED, OUR RESEARCH OF THE FEDERAL SYSTEM INDICATES THAT THERE IS A RELATIONSHIP BETWEEN DISCOVERY AND MINERAL IN CHARACTER. BRIEFLY IT CAN BE STATED THAT IF YOU HAVE A DISCOVERY, YOU HAVE MINERAL IN CHARACTER LAND. IF YOU HAVE MINERAL IN CHARACTER LAND YOU DO NOT NECESSARILY HAVE A DISCOVERY.

HOWEVER THE CONCERN WE HAVE, AND HAS NOT BEEN DISCUSSED BY THE ADMINISTRATIONS LEGAL COUNCIL TO OUR KNOWLEDGE, IS THE BODY OF FEDERAL LAW THAT INDICATES IT HAS NEVER BEEN THE POLICY OF THE CONGRESS TO DISPOSE OF MINERAL LANDS UNDER THE AGRICULTURAL OR NONMINERAL LAWS AND THAT TITLE TO KNOWN MINERAL LAND CANNOT BE ACQUIRED UNDER AN AGRICULTURAL OR NONMINERAL ENTRY.

I HAVE A CONCERN IF WE DO NOT FOCUS 6(i) LEGISLATION ON LANDS WHERE MINING AND MINERAL INTERESTS ARE FOCUSED, WE MAY BE INVITING LITIGATION AT THE LEVEL OF THE RECENT MENTAL HEALTH LANDS LITIGATION, ESPECIALLY IF WE GO BEYOND THE SECTION 6(a) AND (b) LANDS.

FURTHERMORE 6(i) RESERVES THE "RIGHT TO PROSPECT FOR, MINE, AND REMOVE" THE MINERALS FROM THE MINERAL LANDS GRANTED UNDER THIS SECTION. WHAT DOES THIS DO TO OUR ABILITY TO CLOSE STATE LANDS TO MINERAL ENTRY, ESPECIALLY IF ALL LANDS ARE MINERAL IN CHARACTER? I THINK THIS DETERMINATION REPRESENTED IN THE ADMINISTRATIONS BILL, MAY INVALIDATE MINERAL CLOSURES AND THUS THROW OUR WHOLE SYSTEM OF LAND MANAGEMENT INTO CHAOS.

THE U.S. SUPREME COURT, ON THE OTHER HAND, HAS UPHELD THAT ..."IF THE LAND IS WORTH MORE FOR AGRICULTURE THAN MINING, IT IS NOT MINERAL LAND, ALTHOUGH IT MAY CONTAIN SOME MEASURE OF GOLD OR SILVER." I SUSPECT THIS WOULD ALSO BE TRUE OF OUR STATE PARKS. THE IMPORTANT POINT HOWEVER, IS IF WE ADOPT A SYSTEM LIKE THAT IN SB 161, AS THE STATE SUPREME COURT HAS DIRECTED US TO DO, WE DO NOT HAVE TO WORRY ABOUT LITIGATION THAT WILL INVALIDATE STATE MINERAL CLOSING ORDERS.

THIS CONCLUDES MY REMARKS MADAM CHAIR[redacted].

Senator John B. (Jack) Coghill
Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0862

MEMORANDUM

To: Senator Bettye Fahrenkamp
Senate Resource Committee Chair

From: Senator Jack Coghill

Re: 6(i) and the issue of Reclamation

Date: February 28, 1989

There is a perception in the halls of the capitol that reclamation will continue to be linked to resolution of 6(i). You know of my position that this is a disservice to the industry, because it removes the focus from setting fair rent and royalty rates. You have also expressed like sentiments. So I have three suggestions if you are to use the Governors bill (SB 129) as the vehicle.

1. Add at line 23 (SB 129); The primary use of land covered by a mining lease is the extraction of minerals.

2. If a reclamation clause is to be tacked on to the bill, it should also include the direction that patenting of the surface will be part of the reclamation bill.

3. Since we will be going outside the preview of rents and royalties by tacking on reclamation, I would suggest you address the inequities of the interior river fisheries in the next fish tax or enhancement bill before the committee, by requiring the development of an individual quota system for fishermen.

I believe that Suggestion 1 and 2 are self-explanatory, as they are peripheral to the issue of reclamation. However I have also supplied in this memo the rational for Suggestion 3.

Rational for Suggestion 3.

The interior river fisheries are presently being managed as if the purpose of every fish entering the system was spawning. This does not allow for the beneficial use of the river fisheries by rural river residents use in developing a cash economy. Presently, allocation of the resource is such that over fishing in the coastal intercept fisheries, results in very brief commercial fisheries if any are allowed at all. It

is also evident that the species which have the highest commercial value in the interior river systems, are impacted primarily as a result of "bycatch" overfishing.

Bycatch, as you know, is the harvesting of fish species incidental to fishing a different species. For instance, the bycatch for a coho or King salmon opening in Bristol Bay or the Being Sea, is chum salmon, bound for the Yukon and Tanana Rivers.

A quota system would better allocate the benefits of our fish resources, among users, and eliminate over fishing when run strengths are perceived to be high in coastal waters.

Background for Suggestion 3.

There is a political and policy similarity between appropriate levels of Reclamation and Bycatch. Both present a contentious management issue in 3 basic ways:

1. In the case of bycatch of a species in one fishery, this may reduce the amount of that species that can be taken in the fishery that targets on it.

In the case of reclamation, a particular mine site is considered to have reduced the amount of land area, natural or otherwise, that can be utilized by other activities. Reclamation then must be at a level that targets these other land uses.

2. With bycatch, a fishery may not be able to control it's bycatch level, without using less productive or more costly fishing techniques.

With reclamation, a mine may not be able to perform reclamation without reducing the potential to mine marginally economic ore zones or employing reclamation schedules that jeopardize the mines economic viability.

3. Presently there is not a mechanism in place that tends to assure bycatch levels will be controlled to the appropriate management levels automatically.

However, there is a mechanism in place that assures reclamation at this time. The mechanism is the permit process where each individual mine is given reclamation stipulations.

The question that seems to be raised by the present discussions is whether or not the reclamation levels stipulated in permits are at the appropriate level to restore what ever the targeted future uses might be.

The answer to the appropriate bycatch level then, seems to be the institutionalization of individual fish quotas.

There are two assumptions we can make in both issues of appropriate bycatch levels, and appropriate reclamation levels. First the levels can be determined through a political process prior to the activity or secondarily, the levels can be determined by a market process during the activity.

From these assumptions we can recognize that the appropriate level for one bycatch species, or the reclamation of one mine site, is probably not independent of those of other bycatch species, or independent of reclamation of mines in other regions of the state.

We can also see that the concept of "bycatch needs" is so poorly defined that it could be counter productive in discussions focused on related fishery issues. The same can be said of the concept of "reclamation needs", being counter productive to discussions which should be focused on the related issue of rents and/or royalties.

In closing I will take this opportunity to remind those you might circulate this memo to, that the value of our natural resources depends on the rules that govern their use. These rules may be either formal laws and regulation of government or informal cultural rules of a particular user group.

This "value concept" is true whether you interpret value as economic benefits provided to society, a particular allocative distribution of benefits, or the achievement of a particular intangible cultural or conservation ethic.

I believe that so long as we are going to start using coercive tactics to impart additional rules on a particular user group, in order to give other user groups a perceived advantage or benefit, we should employ this process on other allocative resources.

Thank you for your consideration of this lengthy memorandum.

665 Farmers Loop Road
Fairbanks, Alaska 99712
February 6, 1989

Dear Legislators,

I would like to address a few of my concerns regarding Senate Bill 129 and House Bill 99.

Enclosed are a couple of pages from the 6(i) Lawsuit. As I read it, this lawsuit only pertains to mining leases. As far as I know locations under the federal mining laws are not leases. As yet the State has no regulations to patent mineral lands. Therefore, the State only needs rents OR royalties, not both, and only on land sold, grants, deeds or patents which would not include lands staked under the location system, and then only lands known to have been mineral in character at the time of State selection.

Senate Bill 129 and House Bill 99 will make it prohibitive for the small miners to locate and hold mineral lands long enough to develop them into productive mines. Think back to what developed our State. Many claims being worked today were staked in the 1900's and earlier. Many of these claims would have been lost to the Parks if not for early mining claims.

Please consider a minimum leasing system only on lands withdrawn from location as stated in the 6 (i) Lawsuit and only a small fee without a graduated increase.

The above concerns are made for the record.

Sincerely,

Glenn D. Bouton

Glenn D. Bouton

THE SUPREME COURT OF THE STATE OF ALASKA

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

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

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

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

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

MATTHEWS, Justice.

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

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

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

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

CONCLUSION

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

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

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

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

HB 99 Mining Claims, Leases, Rents, & Royalties:
KEY CHANGES NEEDED

1.) LANDS COVERED - Needs expansion to include offshore lands.

2.) RATES - Needs substantial increase. Suggest no annual assessment reduction; double rental rates; calculate royalty on gross income only, and run percentages from 3% for the lowest income category to 8 or 10% for the highest.

3.) RECLAMATION - Add a section to read:

Section 38.05.213. RECLAMATION. (a) All mining claims, leasehold locations, and mining leases shall, at a minimum, be restored so that the affected land and water of the state is capable of supporting all the uses it was capable of supporting prior to any mining, or all higher or better uses of which there is a reasonable likelihood, consistent with all applicable laws and the Alaska Constitution.

AND add language which clearly states that DNR, ADF&G, and DEC share joint responsibility for promulgation and enforcement of the reclamation regulations, with full participation by all three agencies.

February 13, 1989
by Bill Glude

2356 Tonstrom Dr.
Anchorage, AK 99517

February 20, 1989

Dear Representative Menard,

It was a pleasure speaking briefly with you two days ago at the home of Mr. and Mrs. Ashley Reed. As I indicated then, my principal concern is the final wording of the "6(i)" bill. But simply, it must not be so onerous as to discourage mining ventures on State land. As the income from oil and gas leases decreases, it will become more necessary for a diversified and healthy suite of industries.

I am enclosing a copy of the Alaska Miners Association's letter to Governor Cowper on the subject. It briefly states the

Association's four principal concerns taken together they would assure a continued healthy mining industry

If I can be of further assistance in this matter, or you wish clarification of any part of it, please do not hesitate to write, or call me. My phone number at home is 243-0644. Like most Alaskan retirees I have several interests, so if you don't catch me on the first call, please call again.

I did enjoy seeing you again, and hope that we can discuss some of the miners' difficulties at more length in the future.

Sincerely yours,

George Schmidt

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

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

RA Hughes

Richard A. Hughes
President

ATTACHMENT: Mineral in character language

cc: Paul Glavinovich
Jim Burling
Judy Brady
Jerry Gallagher

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND AND WATER MANAGEMENT

NORTHERN REGION
3700 AIRPORT WAY
FAIRBANKS, ALASKA 99709-4613
PHONE: (907) 451-2700

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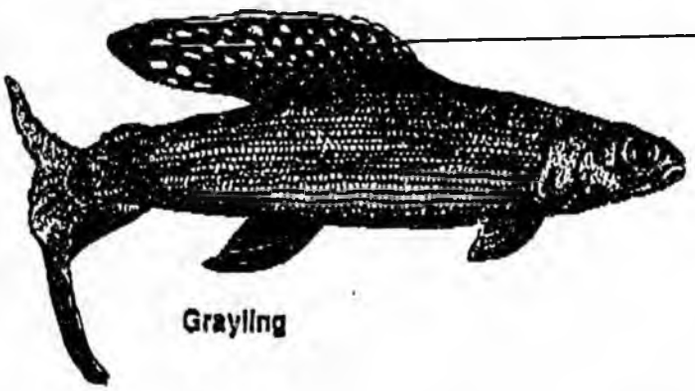
3.7 Fisheries



Grayling

Fish species reported in the Fortymile River drainage include arctic grayling, sheefish, round whitefish, longnose sucker, and slimy sculpin (see Fisheries Map). Other species that may occur are humpback whitefish, northern pike, burbot, chinook salmon, and chum salmon. Data collected on Fortymile River resident fish address summer distribution and aspects of life history. Information concerning resident fish species including salmon, within the Fortymile River drainage is marginal (ADF&G 1987b). Because data for the Fortymile River are limited, references will be made primarily to the segments within the Wild and Scenic Rivers System (DOI 1983, Map 1).

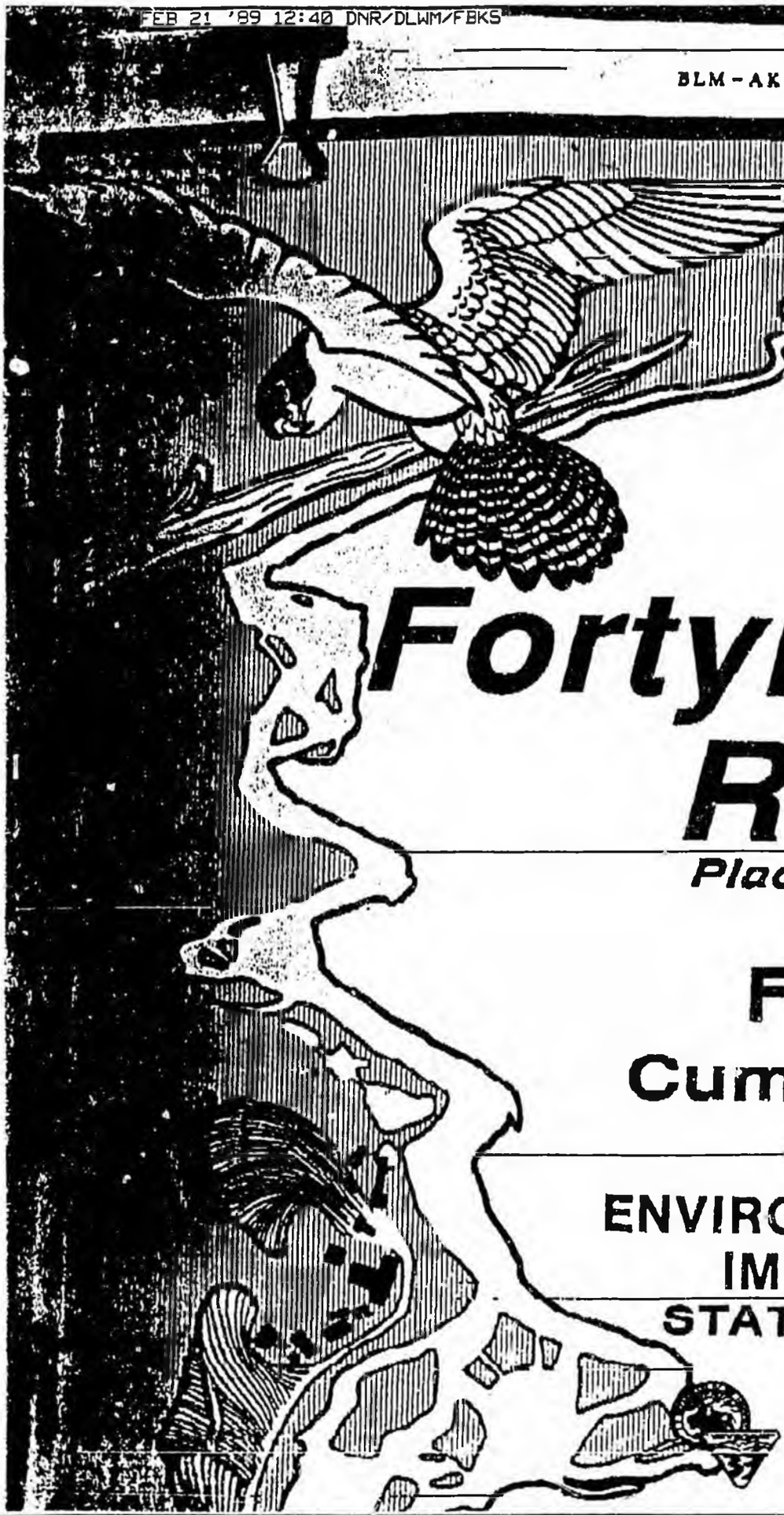
Two adult chinook salmon (one live female and one dead male) were observed 0.8 mile below the Kink, a channel blasted through the stream bank by miners in 1900, and 1.5 miles above the confluence of the North and South Forks (Carufel 1987). Prior observations reported chum salmon below the Kink in August 1981 during an ADF&G aerial survey and a chinook salmon caught by a sport angler in the North Fork Fortymile River above the Kink near Champion Creek (Dames and Moore 1982).

Canadian researchers using beach seines and baited traps on the lower Fortymile River and its tributaries in September 1984 collected 63 juvenile chinook salmon from Clinton and Mickey Creeks below the international border (vonFinster 1985). These two streams, and possibly others, may serve as rearing areas. Scattered, random sightings of what are considered stray chum and chinook salmon have occurred from historic times to the present. Since fidelity of returning salmon to natal spawning habitat is not 100% and the reported sightings are rare, the Fortymile River does not appear to support an established spawning population (Webb pers. comm. 1988).

Grayling are the most widespread species within the Fortymile River drainage. (ADF&G 1987b). A joint survey by BLM and ADF&G personnel (ADF&G 1975) reported grayling in several tributary streams of the Middle, North, and South Forks of the Fortymile River. Johnson (1980) collected grayling at Champion Creek, and Dames and Moore (1982) sampled the upper reaches of the North Fork in the summer of 1981 and found small numbers of grayling in Champion, Happy New Year, and Slate Creeks.

Indications that these streams are potential spawning areas are supported by grayling measuring 3.6 inches observed by Carufel (1987) in the Middle Fork near Joseph, fry collected by Dames & Moore (1982) in lower Slate and Champion Creeks and sampling by von Finster (1985) and Fortymile Placers (1988) who captured young grayling from the Fortymile River in Canada. These

BLM-AK-ES-89-003-3809-918



Fortymile River

Placer Mining

Final Cumulative

ENVIRONMENTAL IMPACT STATEMENT

Department of the Interior
Bureau of Land Management
Alaska State Office
1988

coarse substrate of the Fortymile River, significant sub-surface flows of water are highly probable.

3.0 REVIEW OF EXISTING FISHERIES INFORMATION

As with many remote streams in the Yukon, quantitative data on salmon and on the populations of other species in the Fortymile River are limited. Comprehensive annual escapement surveys are not conducted by DFO and much of the available fisheries inventory data for such Yukon streams is available from past studies related to pipeline and/or transportation corridors. In addition, escapements to the lower Canadian portion of the Yukon River and tributaries are presently believed to be depressed, and spawning sites are still undocumented. For example, the majority of the chinook spawning streams in the Yukon River Basin each support between 100 and 300 adults (Fisheries Work Group, 1984).

3.1 Canadian portion of the Fortymile River

As part of the Yukon River Basin study, chinook were radiotagged above the Canada/U.S. border in 1983 to study the distribution and relative abundance of adult chinook within the Canadian portion of the Yukon River Basin (Milligan et al., 1984). Two radiotagged chinook were tracked into the Fortymile River but they did not spawn in the river. The sample size of radiotagged chinook was small, however, and the spawning distribution within other Yukon sub-basins was known to be much more extensive than that indicated by the radiotagging results alone. The authors of the above report also noted that previous studies had documented chinook spawning in three areas of the lower Yukon mainstem and in a number of tributaries including the Fortymile, Coal Creek, Fifteenmile, Chandindu and the Klondike Rivers. Radiotagged chinook did not enter into any of these systems.

EIS (page 3-49, copy attached), ADF&G personnel stated that the Fortymile River does not appear to support an established spawning population (Webb 1988).

The ADF&G has issued me a permit stating my operation will cause no damage to fish or game or their habitat. However, this anadromous fish classification has caused the Army Corps of Engineers to deny me a General Placer Mining Permit. As stated above, I have made my living and supported my family by working the Fortymile river for almost half my life. If the fish were there and the river was truly important for anadromous fish, I would not request the change. However, I should not be denied my livelihood due to a mistake or unjustified entry into the ADF&G important anadromous waters catalog. I request this change be made as soon as possible so I can go on to making a living. If the Corps of Engineers does not issue me a permit early in March, I will not be able to work this entire year because of the need to start the operation in the winter months.

I would appreciate any help you can give me in this regard.

Respectfully Submitted,

David Likins

David Likins

cc: Lennie Gorsuch - Commissioner, DNR
Senator Jack Coghill, District 17
Representative Dick Shultz, District 17
Senator Bettye Fahrekamp
Representative Bill Hudson
Representative Curt Menard
Representative Richard Foster
Col. William Kakel - US Army Corps of Engineers

David Likins
Fortymile River
Eagle, Alaska 99738

February 20, 1989

Commissioner Don W. Collinsworth
Alaska Department of Fish and Game
P.O. Box 3-2000
Juneau, Alaska 99802

Dear Commissioner Collinsworth,

In accordance with AS 16.05.870 (a), the Department of Fish and Game (ADF&G) shall, in accordance with the Administrative Procedure Act (AS 44.62), specify the various rivers, lakes and streams or parts of them that are important for the spawning, rearing or migration of anadromous fish. Under this provision, ADF&G has through regulation, published a catalog and atlas of maps of waters important for the spawning, rearing or migration of anadromous fishes.

I feel that there is an error in this catalog and I wish to petition for a change in the catalog. Specifically I petition that the Fortymile River (ADF&G reference #334-45-11000-2600) be removed from the classification as being important for the spawning, rearing or migration of anadromous fishes. Currently the river is classified for King and Chum Salmon. I have lived and worked on the Fortymile River for over 17 years and I would expect that if the river were important for the salmon, I would at least see a few live or dead salmon in the river every year. I have not.

Recently a Fortymile River Final Cumulative Environmental Impact Statement was published by BLM. In this document it pointed out that Canadian researchers found salmon in Clinton and Mickey creeks, two tributaries of the Fortymile River near its confluence with the Yukon river. In these lower reaches the Fortymile River has the characteristics of a backwater area to the Yukon River and is a river of entirely different character to the Fortymile River in Alaska. The Canadian report (attached) is good biological data and I have no doubt that Salmon are in the lower most reaches of the Fortymile. These same Canadian researchers state that information on chinook and chum salmon on the Alaskan side of the Fortymile River is limited and somewhat contradictory. In 1975, ADF&G reported that no salmon were observed. The classification appears to be the result of scattered reports of fish in the 1960's. Most recently two fish were spotted in the summer of 1988 by BLM personnel. However, these are rare scattered random sightings, and according to the

In 1987, the BLM conducted a pilot program to determine sampling sites and methods for investigations in subsequent years (Caruthers, 1987). Two adult chinook salmon were observed on August 21 and 22; a female near the Kink (approximately 16 km upstream of the Canadian border) and a male near the confluence of the North and South Forks.

On October 16, 1987, the ADF&G flew the upper Fortymile on a chum salmon spawning survey but no salmon were observed (Anderson, 1987b).

4.0 SALMON STUDIES IN 1987

The purpose of the 1987 salmon studies in the Fortymile River was to document chinook and chum spawners and their distribution, and to document the relative abundance and distribution of juvenile chinook salmon.

The adult salmon program consisted of 2 aerial surveys on August 5 and September 24, 1987 and a gillnetting program in the lower Fortymile River from September 13 to September 23. A juvenile sampling program was conducted by boat from August 25 through August 27, 1987. Boat access was from the Eagle Bridge on the Fortymile in Alaska about 25 kilometres upstream of the Alaska-Yukon border downstream to the Clinton Creek bridge in the lower Fortymile River. The study location is shown in Figure 1.

4.1 Methods

Adult Salmon

The adult salmon surveys consisted of two aerial surveys of the Fortymile River by helicopter; the first on August 5, 1987 to observe chinook salmon spawners and the second on September 24

salmon. The second station, just downstream of the canyon, yielded three male chum salmon.

3.2 U.S. portion of the Fortymile River

The information on chinook and chum salmon on the Alaskan side of the Fortymile River is also limited and some are contradictory. In an undated letter to Ms. Chapman of Fortymile Placers, Jim Webb of the U.S. Bureau of Land Management (BLM) states that the BLM, in cooperation with the Alaska Department of Fish and Game (ADF&G) conducted field investigations on the Fortymile River and tributaries during 1975. No salmon were observed at that time. Mr. Webb states that "there is no documented evidence of salmon spawning in the Fortymile River or its tributaries. While stray King (chinook) salmon have been seen periodically over the years, there is no reason to believe a viable spawning population exists" (Fortymile Placers, 1986).

However, in a letter to Gordon Zealand of DFO Whitehorse, Fred Anderson of the ADF&G states: "this Department maintains a comprehensive listing of streams and rivers known to contain anadromous fish. The Fortymile River is listed in this document as an anadromous stream". He then notes various observations and reports including 1960 reports of chinook and chum spawning near the Taylor Highway, chums captured near Steele Creek, and chinook carcasses observed near the old village of Joseph (Anderson, 1987a).

In 1986, the ADF&G conducted an investigation to determine if rearing chinook fry utilized the Fortymile River between O'Brien Creek and the Canadian border (Fortymile Placers, 1986). Minnow traps baited with sockeye salmon roe were fished for a total of 24 trap nights between July 8 and July 10. No chinook salmon juveniles were captured at that time.

Several studies have confirmed the presence of juvenile chinook salmon in the Fortymile River and a number of its tributaries. In the lower river, chinook juveniles were found in the mainstem in the vicinity of Clinton Creek and in Clinton Creek (EVS, 1971; EPS, 1979). On September 3 and 4, 1984, DFO sampled the lower reaches of Clinton and Mickey Creeks as well as the mainstem Fortymile between the two tributaries using seines and/or minnow traps. Juvenile chinook salmon were found in all areas (total of 65 chinook) and 49 chinook were captured in two overnight minnow trap sets in Clinton Creek (Clarke, 1984). In August 1985, eight beach-seine sets in the Fortymile River yielded two chinook juveniles and confirmed the presence of chinook juveniles in the upper Fortymile River above the placer mining operation (von Finster, 1985). This latter study coincided with the chinook spawning period but no adults were observed. Water levels were high, however, and the river was deeply stained.

The spawning distribution of chum salmon in the Yukon River Basin is not as well known as that for chinook (Fisheries Work Group, 1984). Fall chum runs have been documented in nine Canadian streams including the Klondike River in the lower Yukon.

In 1986, the Fishery Officer conducted investigations into chum salmon spawning on the Fortymile River (McDonald, 1986). Two floats were made down the river in an inflatable boat. No spawning chum were observed although a chum carcass was found approximately one half mile upstream from the Clinton Creek townsite pumphouse. In addition, 101.5 hours of gill netting between September 12 and 18 was carried out at two stations. The first station, approximately 500 meters downstream of the Clinton Creek bridge, yielded two female and two male chum

SALMON PRESENCE IN THE FORTYMILE RIVER, YUKON

L. Jaremovic and A. von Finster

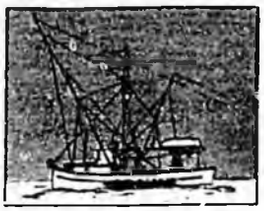
MARCH 1988

DEPARTMENT OF FISHERIES AND OCEANS
HABITAT MANAGEMENT UNIT
NEW WESTMINSTER, B.C.
WHITEHORSE, YUKON

PLEASE NOTE :

THE PRECEDING 10 PAGES WERE SENT IN REVERSE ORDER ...

SORRY
THANKS !



Alaska
Trollers
Association
130 Seward St., No. 213
Juneau, Alaska 99801
(907) 586-9400

March 15, 1989

Representative Curt Menard
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Representative Menard:

The Alaska Trollers Association urges you to amend HB99 and SB129 to include language requiring the resource agencies to promulgate reclamation regulations.

Like the rent and royalties required by section 6(i), reclamation should be considered one of the costs of conducting a business venture on state lands. The right to mine non-renewable resources from state lands is an exclusive use of public domain for one's private benefit. This is not in and of itself bad; however, irreparable damage to our lands can occur when there is no clearly defined criteria in place by which to regulate these operations. Poor mining practices have the potential to compromise the water quality of area drainages, as well as damage the land and render it useless for any future purpose. Numerous studies have been undertaken which document the severe impact that unmanaged placer mining has imposed on existing salmonid spawning and rearing habitat. We believe that the burden of protecting riparian habitat should be shouldered by both the user of the resource, and the state - who is mandated to protect our natural resources.

The state's present attempts to require reclamation are inadequate. It is our understanding that very little reclamation is taking place on state lands, and that many sterile mines are abandoned without being stabilized - in this highly erodible state these mines could continue to degrade area fisheries habitat for years.

We consider this present state of affairs unacceptable. Alaska's fisheries are a long term, renewable resource which will provide jobs and sustenance for generations of Alaskans to come. The health of our fishery depends on the quality of our waters and an abundance of habitat for utilization by our wild stocks. Short term, non-renewable extraction of mineral resources should not compromise the essence of Alaska's future - our fish and wildlife resources. It is imperative that the legislature act to amend HB99 and SB129 to direct DNR, ADF&G, and DEC to develop regulations which will ensure that mined lands are restored to a condition adequate to support healthy populations of fish and wildlife.

Sincerely,

Dale A. Kelley

Dale A. Kelley

2/28/89

KBCS

KACHEMAK BAY CONSERVATION SOCIETY
BOX 846
HOMER ALASKA
99603

Pouch U
Juneau, Alaska 99811

Dear Representative Swackhammer:

I am writing on behalf of the Kachemak Bay Conservation Society regarding 6(i), a provision in the Alaska Statehood Act which requires the state to charge rent or royalties for mining operations on state lands.

Our Society (KBCS) strongly support a "reclamation" amendment being added to the Bills (HB99 + SB129), addressing the above mentioned issue.

We think it is impossible to talk about the public interest in mining without considering the issue of reclamation. Placer mining in particular is an exclusive use of the land which can destroy or severely impair other uses such as drinking water, fish spawning + rearing, + recreation if it is not carefully managed. The

KACHEMAK BAY CONSERVATION SOCIETY
BOX 846
HOMER ALASKA
99603

states current reclamation program is hampered by lack of good coordination between the responsible agencies DNR, ADF+G + DEC + because ~~of~~ present statutory authority is not broad enough. HB 994 SB 129 should be amended to authorize these agencies to jointly develop unified Comprehensive regulations on reclamation.

Thank you.

Sincerely,

Roberta Highland

KBCS Board Member

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

December 30, 1988

SUMMARY OF: A Report on the Department of Environmental Conservation, Department of Fish and Game, Department of Natural Resources, and Office of the Governor, Water-Related Regulatory Expenditures and Costs, December 15, 1988.

PURPOSE OF THE REPORT

In accordance with a Legislative Budget and Audit Committee special request and the provisions of Title 24 of the Alaska Statutes, a review was conducted of state resource agency expenditures related to the adjudication of water rights, protection of habitat, consistency determinations with pertinent coastal zone plans, and the regulation of water quality in order to allocate those expenditures on a regional and industry basis. In addition, in order to develop a sense of the costs involved to comply with the various state regulatory requirements, a limited survey of major permittees was conducted.

FY 87 and FY 88 state expenditures are included in our report. As discussed further in the Methodology, Assumptions, and Definitions section of the report, expenditures were allocated on a variety of bases, such as general estimates made by various state officials and personnel, documentation provided by timekeeping records, and accounting information on the State's accounting system.

REPORT SUMMARY

Statewide, approximately $12,900,000 of FY 87 and FY 88 water-related regulatory expenditures, involving five state agencies, were identified and allocated on a regional, industrial, and regulatory activity basis.

The largest portion of the allocated expenditures were those of the Department of Environmental Conservation (DEC). DEC accounted for $6.3 million of the allocated expenditures. The Department of Fish and Game, Division of Habitat had almost $3.4 million of the allocated expenditures, primarily involving that agency's Title 16 habitat protection permitting process.

Of the ten industry categories included in the report, the placer mining industry received the largest allocation of regulatory expenditures with almost $3.5 million of the approximate $12.9 million allocated. Most of the placer mining regulatory effort takes place in the Northern region of the State, although the regulation of placer miners is also a significant part of the Southcentral region's oversight effort.

Regulation of water and wastewater systems for private residences, with an allocated total of approximately $2.5 million, was the second highest allocation of expenditures. Over half of these allocated expenditures are related to review of these systems in the Southcentral region of the State.

The largest part of the State's regulatory effort involves permitting activities. Permitting, as defined for the purposes of this report, accounted for just over $7.1 million of the $12.9 million allocated. Assessment and the provision of technical assistance to various permittees accounted for just over $3.5 million in expenditures, while monitoring of permittees for compliance with permit conditions and stipulations accounted for the remaining $2.2 million in expenditures.

In regional terms, the Southcentral part of the State accounted for the largest amount of regulatory expenditures, with an allocation of almost $5.8 million. The Northern region's allocation was $4.4 million, and the Southeastern region received an allocation of just over $2.6 million.

February 23, 1989

RECEIVED MAR 13 1989

Senator Steve Frank / Bethye Fahrenkamp
Pouch V
Juneau, Alaska 99811

Dear Senator Frank:

I am writing to encourage you to consider the importance of including a provision for reclamation in the "Mining Rent and Royalties Bills," H.B. 99 and S.B. 129. Inclusion of a reclamation requirement into this legislation is critically important in order to ensure that public interests in state lands are protected during the mining process and after mining occurs.

As you are no doubt aware, in the "6i" lawsuit the court ruled that under the state constitution, citizens of Alaska should receive some return for mineral resources taken from state lands which were selected because of their mineral character. I personally believe that the state should receive a "fair" return for its mineral resources but that large rents and royalties might severely restrict the economic feasibility of smaller mining operations. In reality, royalties from small mines are not likely to significantly enhance the state's financial status anyhow.

Requiring reclamation of state mining claims will ensure that the multiple use of these lands will continue once mining has been completed. Over time all the public will benefit if previously mined areas are returned to an ecologically productive condition. Because of this, reclamation should be the initial requirement of the Mining Rent and Royalties Bill.

Reclamation, once adopted as a routine component of a mining plan, does not have to involve excessive expense to the miner. Areas mined in the past can be reclaimed as new mining cuts are made. Obviously, there will be differences of opinion about what constitutes an adequate level of reclamation and what is reasonable to the miner. These provisions can be worked out in the legislative process where all parties will have an opportunity to present their views. I would be happy to assist in working to reach an acceptable compromise on this issue if the need arises.

I would prefer to see the final legislation on this issue include reclamation and keep the royalty rates for small mines to a minimum. Larger mines should be required to pay larger royalties commensurate with the amount of resources taken from state lands. I urge you to include a reclamation requirement in S.B. 129.

Thank you for considering my views on this subject.

Sincerely,

RR

Randy R. Rogers

Box 82215
Fairbanks, Alaska 99708

cc: Alaska Environmental Lobby

Neil MacKinnon
1114 Glacier
Juneau
586-1254

COMPARISON OF TAX STRUCTURES OF A SMALL GOLD MINE IN JUNEAU, ALASKA
TO THAT OF NEVADA AND IDAHO

	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

COMPARISON OF TAX STRUCTURES OF A LARGE GOLD MINE IN JUNEAU, ALASKA TO THAT OF NEVADA AND IDAHO

	ALASKA	NEVADA	IDAHO
OREBODY TONNAGE	100,000,000	100,000,000	100,000,000
TPD PRODUCTION	22,000	22,000	22,000
ORE GRADE	0.05	0.05	0.05
DAYS PRODUCTION	360	360	360
TONS / YEAR	7,920,000	7,920,000	7,920,000
OZ PRODUCED	396,000	396,000	396,000
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%	4.0%
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	158,400,000	158,400,000	158,400,000
LEASOR ROYALTY	4,752,000	4,752,000	4,752,000
MINE GROSS	153,648,000	153,648,000	153,648,000
MINING COSTS	79,200,000	79,200,000	79,200,000
MINE NET	74,448,000	74,448,000	74,448,000
DEPRECIATION	7,920,396	7,920,396	7,920,396
DEPLEATION	23,047,200	23,047,200	23,047,200
TAXABLE INCOME	43,480,404	43,480,404	43,480,404
FED INCOME TAXES	14,783,337	14,783,337	14,783,337
STATE INCOME TAXES	4,087,158	0	3,478,432
STATE MINING LIC TAX	3,043,628	826,128	869,608
BOROUGH PROP TAX	1,594,500	0	3,887,148
STATE ROYALTY	1,304,412	0	0
TOTAL TAXES	24,813,036	15,609,465	23,018,526
EMPLOYEE SALES TAXES	1,520,640	2,030,054	1,520,640
COMPANY SALES TAXES	950,400	1,268,784	1,188,000
STATE & LOCAL GROSS	12,500,738	4,124,966	10,943,829