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ALASKA LAWS AND REGULATIONS FOR STAKING MINING CLAIMS, PROSPECTING SITES AND LEASEHOLD LOCATIONS ON STATE LAND

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ARTICLE 7. MINING RIGHTS
(AS 38.05.185 -- 38.05.275)

CHAPTER 86.
MINING RIGHTS
(11 AAC 86.100 -- 11 AAC 86.600)

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Sec. 38.05.185. Generally. (a) The acquisition and continuance of rights in and to deposits on state land of minerals which on January 3, 1959, were subject to location under the mining laws of the United States shall be governed by AS 38.05.185 — 38.05.275. Nothing in AS 38.05.185 — 38.05.275 affects the law pertaining to the acquisition of rights to mineral deposits owned by any other person or government. The director, with the approval of the commissioner, shall determine that land from which mineral deposits may be mined only under lease, and, subject to the limitations of AS 38.05.300, that land which shall be closed to mining. State land may not be closed to mining or mineral location unless the commissioner makes a finding that mining would be incompatible with significant surface uses on the state land. State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under AS 38.05.205 or the commissioner has determined that the land was mineral in character at the time of state selection. The determinations required under this subsection shall be made in compliance with land classification orders and land use plans developed under AS 38.05.300.

(b) The failure on the part of a mining lessee or a locator to comply strictly with AS 38.05.185 — 38.05.275 and regulations adopted under those sections does not invalidate the rights of a mining lessee or a locator if it appears to the satisfaction of the commissioner that the mining lessee or the locator complied as nearly as possible under the circumstances of the case, and that no conflicting rights are asserted by any other person.

(c) Unless otherwise provided, the usages and interpretations applicable to the mining laws of the United States as supplemented by state law apply to AS 38.05.185 — 38.05.275. (§ 1 art IX ch 169 SLA 1959; am § 19 ch 61 SLA 1960; am § 1 ch 123 SLA 1961; am § 1 ch 108 SLA 1981)

Revisor's notes. — In 1984, the phrase "the mining lessee or" was inserted following "the satisfaction of the commissioner that" in (b) of this section under AS 01.05.031(b)(7), and the former last sentence of (b) was designated as subsection (c).

Cross references. — For location and development of mining claims on federal public domain, see AS 27.10.

Effect of amendments. — The 1981 amendment added the fourth through sixth sentences of subsection (a).

Collateral references. — 54 Am. Jur. 2d, Mines and Minerals, §§ 23, 167.

58 C.J.S., Mines and Minerals, § 4 et seq.

Sec. 38.05.190. Qualifications. (a) The right to acquire exploration and mining rights under AS 38.05.185 — 38.05.275 may be acquired or held only by

(1) citizens of the United States at least 18 years of age;

(2) legal guardians or trustees of citizens of the United States under 18 years of age on behalf of the citizens;

(3) persons at least 18 years of age who have declared their intention to become citizens of the United States;

(4) aliens at least 18 years of age if the laws of their country grant like privileges to citizens of the United States;

(5) corporations organized under the laws of the United States or of any state or territory of the United States and qualified to do business in this state, except that if more than 50 percent of the stock of a corporation is owned or controlled by aliens who are not qualified, the corporation is not qualified to acquire or hold the rights;

(6) associations of persons described in (1) — (5) of this subsection.

(b) An unqualified person who acquires an interest in exploration or mining rights by operation of law shall be allowed two years in which to become qualified or to dispose of the interest to a qualified person. (§ 2 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 2 ch 93 SLA 1984)

Revisor's notes. — In 1984, former (a)(5) and (a)(6) of this section were reorganized as (a)(6) and (a)(5) respectively. A corresponding change in the internal reference in present (a)(6) was made.

Effect of amendments. — The 1984 amendment, in subsection (a), substituted "18" for "19" in paragraphs (1)-(4), "the" for "such" near the end of paragraphs (2) and (6), and "persons described in (1) — (6) of this subsection" for "such persons" in paragraph (5).

Sec. 38.05.195. Mining claims. Rights to deposits of minerals subject to AS 38.05.185 — 38.05.275 in or on state land that is open to claim staking may be acquired by discovery, location and filing as prescribed in AS 38.05.185 — 38.05.275. The locator has the exclusive right of possession and extraction of the minerals subject to AS 38.05.185 — 38.05.275 lying within the boundaries of the claim. A location may not exceed 1,320 feet in its longest dimension, and the boundaries of a claim located after January 1, 1985 shall run in the four cardinal directions unless the claim is a fractional claim or the commissioner determines that staking in compliance with this section is impractical because of local topography or because of the location of other claims. A location shall be distinctly marked on the ground in the manner prescribed by the commissioner and a notice of location shall be posted on the claim in the manner and containing the information required by the commissioner. Within 90 days after the date of posting

the notice of location on the claim, the locator shall file for record in the recording district where the claim is located a certificate of location. The certificate of location shall contain the information required by the commissioner. Locations may be amended in the manner and with the effect prescribed in AS 38.05.200. Annual labor shall be performed and statements of annual labor recorded as prescribed in AS 38.05.210 — 38.05.235. (§ 3 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 3 ch 93 SLA 1984)

Effect of amendments. — The 1984 amendment, effective January 1, 1985, inserted "subject to AS 38.05.185 — 38.05.280" in the second sentence and "of a claim located after January 1, 1985" in the third sentence, added "unless the claim is a fractional claim or the commissioner determines that staking in compliance with this section is impractical because of local topography or because of the location of other claims" at the end of the third sentence, and made a series of technical changes throughout the first three sentences.

Opinions of attorney general. — The filing of a prima facie valid application for an offshore prospecting permit under AS 38.05.250 acts to segregate the land from the public domain, thereby precluding a later mining claimant from obtaining any right to the minerals in that land, even where the offshore prospecting permit application subsequently is declared void, is withdrawn, or is denied. February 23, 1984, Op. Att'y Gen.

NOTES TO DECISIONS

Cited in Moore v. State, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

Sec. 38.05.200. Changes in locations and amended notices. Notices may be amended at any time and monuments changed to correspond with the amended location but a change may not be made that interferes with the rights of others. Whenever monuments are changed or an error is made in the notice or in the certificate of location, an amended certificate of location shall be filed for record in the same manner and with the same effect as the original certificate. (§ 47-3-34 ACLA 1949)

Collateral references. — 54 Am. Jur. 2d, Mines and Minerals, § 25 et seq.

58 C.J.S., Mines and Minerals, § 12 et seq.

Sec. 38.05.205. Mining leasing. (a) Prior discovery, location and filing shall initiate prior rights to mineral deposits subject to AS 38.05.185 — 38.05.275 in or on state land, other than submerged land, which is open to mining leasing. Locations shall be made and certificates of location recorded in accordance with AS 38.05.195. If the located land is available only for leasing, the director shall publish in a paper of general circulation in the area of the location, notice of the filing of the location and notice that a mineral lease will be issued. The notice may be combined with notices of locations either in the same general area or statewide. Unless a conflicting location exists, no later than two weeks after publication of the notice, an application form for a mining lease shall be mailed to the locator by the director. A lease application shall be filed with the director by the locator within 90 days after receipt of the form. If the located land is not available for leasing, notice shall be given the locator by the director and the locator's prior rights shall terminate. A mining lessee has the exclusive rights of possession and extraction of all minerals subject to AS 38.05.185 — 38.05.275 lying within the boundaries of the lease or location. Mining

leases may be issued for one location or for a group of contiguous locations held in common. Minerals may not be mined and marketed or used until a lease is issued, except for limited amounts necessary for sampling or testing.

(b) Beginning on the date established by the commissioner under AS 38.05.210 there shall accrue an annual rental for each leasehold location or portion thereof whether or not under lease, not less than the value of annual labor improvements required for mining claims. The value of work done on, or for the benefit of, the leasehold in compliance with AS 38.05.210 may be credited against the rental.

(c) A mining lease shall be for any period up to 55 years, and the lessee has a right to a new lease at the end of each lease period. The commissioner may make reasonable adjustments of the rental rate at the end of each 20 year period, based upon changed conditions in production costs and markets. A valid mining claim located and held under AS 38.05.195 may be converted to a lease at any time upon application by the owner, and issuance by the commissioner. No rights granted by a mining lease may be exercised until the lease has been filed for record in the recording district where the land is located. (§ 4 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 2 ch 108 SLA 1981; am § 39 ch 152 SLA 1984)

Effect of amendments. — The 1981 amendment in subsection (a), added "the director shall publish in a paper of general circulation in the area of the location, notice of the filing of the location and notice that a mineral lease will be issued" at the end of the third sentence, added the present fourth sentence, added "unless a conflicting location exists, no later than two weeks after publication of the notice" at the beginning of the fifth sentence, deleted "upon request or upon receipt of notice that the location has been made on lands open only for leasing" at the end of the fifth sentence, substituted "the locator's" for "his" preceding "prior rights" in the sixth sentence and added "or location" following "lease" in the seventh sentence.

The 1984 amendment substituted "commissioner" for "director" in the third sentence in subsection (c).

Editor's notes. — Section 5, ch. 108, SLA 1981, as amended by § 1, ch. 90, SLA 1983, provides: "SPECIAL PROVISION FOR MINING LEASE LOCATIONS. Notwithstanding AS 38.05.205(a), until December 31, 1985, minerals may be mined, marketed, or used on a location for mineral leasing under AS 38.05.205 on state land upon discovery, location, and recording in accordance with AS 38.05.195. However, this section does not apply to a locator who does not file an application for a lease within 90 days after receipt of the application form as required by AS 38.05.205."

NOTES TO DECISIONS

Cited in Moore v. State, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

Collateral references. — 54 Am. Jur. 2d, Mines and Minerals, §§ 97 to 101, 120 to 147.

58 C.J.S., Mines and Minerals, § 164 et seq.

"Mine" as used in written instrument, 92 ALR2d 868.

Sec. 38.05.207. Production license. (a) An application for a production license must be filed with the commissioner when a locator of a mining claim under AS 38.05.195 or a lessee of a mining location under AS 38.05.205 is prepared to produce minerals for sale in commercial quantities. The application shall state under oath the location of the land and ownership of the mineral deposits involved in the mining operation and the date production began or is expected to begin. Upon receipt of an application, the commissioner shall publish in a paper of general circulation in the area of the location notice of the application and notice that a production license will be issued. The notice may be combined with notices of other applications either in the same general area or statewide. Pending completion of this public notice requirement and issuance of the production license, the locator or lessee has the right to produce minerals from the property.

(b) If the commissioner determines under AS 38.05.185(b) that a locator or lessee has complied as nearly as possible under the circumstances of the case with the provisions of AS 38.05.185 — 38.05.275 and that no conflicting rights are asserted by any other person, the commissioner shall issue a transferable production license for mineral extraction. If conflicting rights are asserted the commissioner may resolve the conflict. (§ 2 ch 87 SLA 1982)

Cross references. — For purpose and legislative finding, see § 1, ch. 87, SLA 1982, in the Temporary and Special Acts and Resolves.

Opinions of attorney general. — The production license requirement of this section apply to riverbeds that the state claims to own under § 6(m) of the Statehood Act as well as to lands tentatively approved to the state under § 6(a) and (b) of the Statehood Act. June 10, 1982, Op. Att'y Gen.

Sec. 38.05.210. Annual labor. (a) Labor shall be performed or improvements made annually on or for the benefit or development of each mining claim on state land except that where adjacent claims are held in common, the expenditure may be made on any one claim. The commissioner shall establish the date of the commencement of the year during which the labor or improvements are to be performed. Labor shall be performed at the annual rate of $200 per claim. If more work is performed than is required by this section to be performed in any one year, the excess work up to a value of $800 may be applied against labor required to be done during the subsequent year or years.

(b) During the year in which the performance of annual labor is required or within 90 days after the close of that year, the owner of the mining claim or some other person having knowledge of the facts shall file for record with the recorder of the district in which the claim is located a signed statement setting out the information, as may be required by the commissioner, concerning the annual labor of the preceding year and any labor in excess of that required for the preceding year. The statement, properly filed, is prima facie evidence of the performance of the labor. The failure of one of several co-owners to contribute the proportion of the expenditures required for annual labor from the co-owner shall be treated in accordance with AS 38.05.215 — 38.05.235.

(c) The statement of annual labor required in (b) of this section may be amended within two years of the date by which the annual labor statement was required to be filed. An amended statement shall be filed for record in the same manner as the original statement. Addi-

tional labor claimed in an amended statement may not be applied against labor required to be done during a subsequent year.

(d) AS 38.05.240 and 38.05.242 apply to this section. (§ 5 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 1 ch 88 SLA 1970; am § 4 ch 93 SLA 1984)

Revisor's notes. – Subsection (c) was enacted as (b) and renumbered in 1984 and a corresponding change was made in the internal reference in (c). The balance of the section was reorganized into subsections (a), (b) and (d) in 1984 for clarity.

Effect of amendments. — The 1984 amendment added subsection (c).

NOTES TO DECISIONS

Express statement not required. — Neither this section nor the regulations concerning the contents of an affidavit of annual labor require an express statement that excess labor will be carried over to be applied against labor required to be done during the subsequent year or years. Ashbrook v. O'Harra, Sup. Ct. Op. No. 1661 (File No. 2702), 581 P.2d 218 (1978).

Express statement that excess labor will be carried over would serve no function since one can readily determine from the affidavit whether the value of the labor set forth is greater than the minimum required to maintain each claim for the year in question. Ashbrook v. O'Harra, Sup. Ct. Op. No. 1661 (File No. 2702), 581 P.2d 218 (1978).

Cited in Moore v. State, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

Collateral references. - 54 Am. Jur. 2d, Mines and Minerals, §§ 68 to 75.

Sec. 38.05.215. Notice to co-owners to contribute to cost of annual labor or improvements and forfeiture for failure to contribute. If one of several co-owners fails to contribute the proportion of the expenditures required for annual labor from the co-owner, the co-owners who have performed the labor or made the improvements may, at the expiration of the annual labor year, give the delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days. If at the expiration of 90 days after the service of the notice in writing, or 90 days after the completion of the publication the delinquent fails or refuses to contribute the required proportion of the expenditures, the interest of the delinquent co-owner in the claim is forfeited to the co-owners who have made the expenditures. (§ 47-3-56 ACLA 1949)

Sec. 38.05.220. Recording the notice to contribute and affidavits. (a) Within 120 days after personal service, or within 120 days after the completion of publication of the notice provided for in AS 38.05.215, the co-owner who claims the forfeiture shall file for record in the office of the recorder of the recording district in which the claim is located a copy of the notice with the following affidavits attached:

(1) an affidavit of the person serving the notice giving the time, place and manner of service and by whom and upon whom the service was made or, if service was made by publication in a newspaper, an affidavit of the editor, publisher, printer or foreman of the newspaper giving the name of the newspaper, the place where, and the time during which the notice was published and the number of insertions;

(2) an affidavit of the co-owner who claims the forfeiture stating that neither the delinquent co-owner nor any person acting for the delinquent co-owner has paid or tendered to the affiant the delinquent's proportion of the expenditures for annual labor or improvements.

(b) The record of the notice and affidavits or a certified copy of it is prima facie evidence of the facts contained in it. (§ 47-3-57 ACLA 1949)

Sec. 38.05.225. Lienholder may perform the annual labor. A person who holds a claim to or lien upon an unpatented mining claim under a certificate of sale, mortgage, attachment, levy, judgment, or other lien may, when necessary for the protection of the lien or claim, go upon the mining claim and perform or cause to be performed the annual labor required by law to prevent forfeiture. Before performing the labor the claimant or lien holder shall mail a written notice of intent to perform the annual labor on the claim to the owner of the claim at the last known address of the owner of the claim. (§ 47-3-58 ACLA 1949)

Sec. 38.05.230. Lien for performance of annual labor. (a) The person performing or causing to be performed annual labor upon an unpatented mining claim as provided in AS 38.05.225 shall have a lien upon the claim for the assessment work, including the reasonable cost of transportation to and from the claim incurred in doing the work. The lien is enforced either as in other suits for the foreclosure of liens upon real property or as supplemental accruing costs in an action, if any, then pending in which the claim has been levied upon by attachment, execution or other court process.

(b) A person claiming a lien under this section shall, within 90 days after the completion of the annual labor for which the lien is claimed, file for record in the office of the recorder of the recording district in which the property on which the lien is claimed is situated a notice of claim of lien, verified by the oath of the person claiming the lien or that of some other person having knowledge of the facts, and stating the name of the owner or reputed owner of the property, the amount of the claim, the time of the performance of the annual labor for which the lien is claimed, the nature of the labor done or improvements made, and the amount of the claim, including costs of transportation, after deducting all just credits and offsets.

(c) An independent suit or action brought to enforce a lien under this section shall be commenced within six months after the filing for record of the notice of claim of lien. (§ 47-3-59 ACLA 1949)

Collateral references. — 54 Am. Jur. 2d, Mines and Minerals, §§ 256 to 259

58 C.J.S., Mines and Minerals, §§ 259 to 269.

Assertion of statutory mechanic's or materialman's lien against oil or gas produced or against proceeds attributable to oil and gas sold, 59 ALR3d 278.

Sec. 38.05.235. Lien for annual labor is independent of other liens. The lien given for the performance of annual labor by AS 38.05.230, if the work is done in good faith and necessarily for the protection either of possession under a certificate of sale or of an attachment, levy, mortgage, judgment or other lien, remains in effect notwithstanding the contemporaneous or subsequent vacation, dissolution, or setting aside of, or redemption from, the certificate of sale, attachment, levy, mortgage, judgment or other lien. (§ 47-3-60 ACLA 1949)

Sec. 38.05.240. Labor defined for AS 38.05.210 — 38.05.235. In AS 38.05.210 — 38.05.235, "labor" includes geological, geochemical, geophysical, and airborne surveys conducted by qualified experts and verified by a detailed report filed in the recording district office in which the claim is located which sets out fully (1) the location of the work performed in relation to the point of discovery and boundaries of the claim, (2) the nature, extent, and cost of it, and (3) the name, address, and professional background of the person conducting the work. The commissioner, by regulation, shall define the nature of

acceptable survey work and the qualifications of a person competent to perform this work. The airborne surveys, however, may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim, and each of those surveys shall be nonrepetitive of any previous survey on the same claim. (§ 47-3-61 ACLA 1949; added by § 1 ch 67 SLA 1960; am § 2 ch 88 SLA 1970; am § 5 ch 93 SLA 1984)

Effect of amendments. — The 1984 amendment deleted the former second sentence, which read "Basic survey finds shall be filed in the central recording office of the Department of Natural Resources, but kept confidential and released only if the claim or prospecting site lapses," and, in the first sentence, substituted "In AS 38.05.210 — 38.05.235, 'labor' includes" for "The term 'labor' where used in §§ 210 — 235 of this chapter includes, without being limited to" and "of it" for "thereof" near the end, and deleted "or persons" following "person," also near the end.

Sec. 38.05.242. Definitions for AS 38.05.210 — 38.05.240. In AS 38.05.210 — 38.05.240

(1) "airborne survey" means a survey from the air for mineral deposits by the proper application of magnetometers, electromagnetic input systems, infrared detectors, side-looking radar, vertical and panoramic cameras and other devices as they relate to the search for and discovery of mineral deposits.

(2) "geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;

(3) "geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;

(4) "geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuances in geological formations;

(5) "qualified expert" means an individual qualified by education or experience to conduct geological, geochemical or geophysical surveys, as the case may be. (§ 47-3-62 ACLA 1949; added by § 1 ch 67 SLA 1960; am § 3 ch 88 SLA 1970)

Revisor's notes. — Formerly AS 38.05.280. Renumbered in 1984. Also in 1984, the section was reorganized to alphabetize the defined terms.

Sec. 38.05.245. Prospecting sites. (a) Before the discovery of valuable minerals, an exclusive right to prospect by geophysical, geochemical and similar methods may be acquired by marking boundaries and posting a notice of location of a prospecting site in a manner and containing the information the commissioner requires. A prospecting site may not exceed 2,640 feet in its longest dimension and its boundaries shall run in the four cardinal directions. A certificate of location shall be filed for record in the recording district where the prospecting site is located within 90 days after posting the notice of location. The locator of a prospecting site has the exclusive right to stake mining claims or leasehold locations within the boundaries of the site.

(b) A prospecting site location may not include within its exterior boundaries, nor shall its boundaries be coincident with more than one boundary of any mining claim, mining leasehold location, or land under a mining lease, unless the locator of the prospecting site is also the owner, optionee or lessee of said mining property. If such mining property or area is so included or bounded, the prospecting site is void.

(c) A person may not hold more than eight prospecting sites in one township at one time. A prospecting site remains in effect for one year after the notice of location is posted and may, at the discretion of the director, be extended for one year periods. During each year, work of a type compatible with the purpose of this section and acceptable to the director shall be done. The minimum expenditure for the work shall be established by the commissioner uniformly for all prospecting sites. Where adjacent prospecting sites are held in common the expenditure may be made on any one or more locations. If a prospecting site expires, neither the locator nor a successor in interest of the locator may again hold the same prospecting site or any portion of it, as a prospecting site, for a period of one year following the date of expiration or abandonment; nor may the locator or a successor in interest of the locator, during the year, either directly or indirectly, obtain a beneficial interest in the same prospecting site or a portion of it. (§ 6 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am §§ 6, 7 ch 93 SLA 1984)

Effect of amendments. — The 1984 amendment, in subsection (a), deleted "and a copy of the certificate shall also be mailed to the director within the 90 day period" at the end of the next-to-last sentence and made a series of technical changes throughout the rest of the subsection; and, in subsection (c), rewrote the first and last sentences, which formerly read "No person may locate more than six prospecting sites in one calendar year in one recording district" and "If a prospecting site expires, neither the locator nor his successor in interest may again locate the same prospecting site or any portion of it, as a prospecting site, for a period of two years following the date of expiration or abandonment, nor may he, during the two years, either directly or indirectly, obtain a beneficial interest in the same prospecting site or a portion of it," respectively.

Collateral references. — 54 Am. Jur. 2d, Mines and Minerals, §§ 25 to 46.

58 C.J.S., Mines and Minerals, §§ 37 to 48.

Sec. 38.05.250. Prospecting permits and leases on tide and submerged land. (a) The exclusive right to prospect for deposits of minerals subject to AS 38.05.185 — 38.05.275 in or on tide and submerged state land may be granted by a permit issued by the director. Permits shall be granted to the first qualified applicant. A permit may not include an area larger than 2,560 acres, subject to the rule of approximation. Lands subject to a prospecting permit shall be as compact in form as possible taking into consideration the area involved. The term of the permit shall be 10 years. Prospecting permits shall be conditioned upon payment of rental against which credit shall be given for useful expenditures on land covered by the permit or group of contiguous permits under common ownership or assignment. Excess expenditures may be applied against rentals due for the following four years. The rental shall be $3 per acre for the first two-year period of the permit, payable on the second anniversary of the permit and $3 per acre for each following year, payable annually on the anniversary date of the permit. Minerals from land under a prospecting permit may not be mined and marketed or used, except for limited amounts necessary for sampling or testing. A person may not take or hold prospecting permits for minerals on state land under this section exceeding in the aggregate 300,000 acres. A person may not take or hold leases for minerals on state land under this section exceeding in the aggregate 100,000 acres.

(b) A noncompetitive lease shall be granted to a holder of a prospecting permit for so much of the land subject to the permit as is shown to the satisfaction of the director to contain workable mineral deposits. Submerged land containing known deposits of minerals subject to AS 38.05.185 — 38.05.275 may, in the discretion of the director, be offered by competitive bid. The land shall be leased to the qualified person offering the highest amount of cash bonus.

(c) Leases for submerged land shall be conditioned upon payment of an annual rental of $3 an acre. Expenditures on or for the benefit of the leasehold may be credited against the rental. Rent shall be paid or a statement of annual labor shall be filed within 90 days after each anniversary date of the lease. All submerged land mining leases shall be for a period of up to 20 years, and for so long as there is production in paying quantities from the leased area. The commissioner may make reasonable adjustments of the rental rate at the end of each 10-year period, based upon changed conditions in production costs and market.

(d) The commissioner may, on the request of the lessee, assent to the suspension of operation and production under a lease whenever in the judgment of the commissioner the suspension is necessary to promote development of the lease or the lease cannot be successfully operated under its terms. The payment of acreage rental may be suspended during the period of suspension of operation and production. The suspension of the lease shall extend the term of the lease by adding the period of suspension to the lease. The commissioner may extend the term of a nonproducing lease on an application by the lessee accompanied by a showing that the lessee is reasonably close to attaining production and that, despite diligent good faith efforts by the lessee, the lessee is not able to produce due to force majeure, depressed market conditions, or other situations beyond the reasonable control of the lessee. A suspension or extension granted under this subsection may not exceed two years. (§ 7 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 1 ch 96 SLA 1966; am § 4 ch 87 SLA 1982; am §§ 8-12 ch 93 SLA 1984)

Effect of amendments. — The 1982 amendment, in subsection (a) substituted "seven years" for "10 years" at the end of the fifth sentence, added the present seventh sentence, substituted "$3 per acre for each year" for "$1 per acre for the first two-year period of the permit, payable at the end of the period, and $1 per acre for each year thereafter" in the present eighth sentence, and added the present next-to-last and last sentences. In subsection (c), the amendment substituted "$3 an acre" for "$1 an acre" in the first sentence, substituted the language beginning "10 years" for "55 years, and the lessee has a right to a new lease at the end of each lease period" at the end of the fourth sentence, and substituted "10 year period" for "20 year period" in the last sentence.

The first 1984 amendment, effective July 1, 1984, in subsection (a), substituted "land" for "lands" in the first and ninth sentences, "Land" for "Lands" in the fourth sentence, "10" for "seven" in the fifth sentence, "four" for "two" in the seventh sentence and "the first two-year period of the permit, payable on the second anniversary of the permit and $3 per acre for each following year, payable annually on the anniversary date of the permit" for "each year, payable at the end of each year" in the eighth sentence; in subsection (b), deleted the former first sentence, which read "Upon discovery, the right to possess and extract the minerals may be acquired by noncompetitive lease," substituted "land" for "lands" in the second sentence and "The land" for "These lands" in the third sentence, and deleted "responsible" preceding "qualified," also in the third sentence; in subsection (c), substituted "land" for "lands" in the first sentence and "20" for "10" in the next-to-last sentence; and added subsection (d). The second 1984 amendment, effective January 1, 1985, in subsection (a), substituted "300,000" for "100,000" in the next-to-last sentence and "100,000" for "46,080" in the last sentence.

Opinions of attorney general. — The filing of a prima facie valid application for an offshore prospecting permit under this section acts to segregate the land from the public domain, thereby precluding a later mining claimant from obtaining any right to the minerals in that land, even where the offshore prospecting permit application subsequently is declared void, is withdrawn, or is denied. February 23, 1984, Op. Att'y Gen.

NOTES TO DECISIONS

There is no express statutory provision for the "full evidenuary hearing." State, Dep't of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

Subsection (b) does not compel a hearing on the issue of the conversion of an offshore prospecting permit to a mining lease. State, Dep't of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

But entitlement to full and fair opportunity to present case is implicit. — Entitlement to a full and fair opportunity to present his case to the director and the commissioner is implicit in the provision of subsection (b) which provides that the holder of a prospecting permit shall be granted a noncompetitive lease "for so much of the land subject to the permit as is shown to the satisfaction of the director to contain workable mineral deposits." State, Dep't of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

Only with a full and fair opportunity to present his case can the permit holder receive fair consideration of his application, and benefits of a full presentation by the permit holder inure to the state as well by providing comprehensive data for the decisions made by the director. State, Dep't of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

The responsibility for providing the data to the director is on the permit holder. State, Dep't of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

Need for flexible standard in granting noncompetitive lease. — By using the term "workable mineral deposit" in subsection (b) to define what must be "shown to the satisfaction of the director" in order to acquire a noncompetitive lease, the legislature was cognizant of the need for a flexible standard, and, in entrusting this determination to the director, the legislature took notice of the peculiar expertise required in making such decisions. State, Dep't of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

Test on review. — The reasonable basis test is the test required on review as to the propriety of decisions to grant or deny offshore leases pursuant to this section. State, Dep't of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

Applicable rules of law and procedure observed in denying application to convert offshore prospecting permit to mining lease. — See State, Dep't of Natural Resources v. Universal Educ. Soc'y, Inc., Sup. Ct. Op. No. 1701 (File No. 3324), 583 P.2d 806 (1978).

Sec. 38.05.252. Extralateral rights under shore, tide, and submerged land. (a) Extralateral rights under shoreland, tideland, and submerged land are confirmed and granted to an owner of a lode mining claim located before January 3, 1959 under the mining laws of the United States.

(b) In this section, "extralateral rights" means rights given to an owner of a mining claim under 30 U.S.C. 26 to follow, and mine, any vein or lode the apex of which lies within the boundaries of the location of the surface of the mining claim, notwithstanding that the course of the vein or lode on its dip or downward direction may so far depart from the perpendicular as to extend beyond the planes which would be formed by the vertical extension downwards of the sidelines of the location. (§ 1 ch 20 SLA 1985)

Effective dates. — Section 2, ch. 20, SLA 1985, makes this section effective May 10, 1985, in accordance with AS 01.10.070(c).

Sec. 38.05.255. Surface use of land or water. Surface uses of land or water included within mining properties by owners of those properties shall be limited to those necessary for the prospecting for, extraction of, or basic processing of mineral deposits and shall be subject to reasonable concurrent uses. Permits for millsites and tailings disposal may be granted by the director. The permits shall be conditioned upon payment of a reasonable charge for the use and continuance of the limited use. Timber from land open to mining without lease, except timberland, may be used by a mining claimant or prospecting site locator for the mining or development of the location of adjacent claims under common ownership. On other land, timber may be acquired as provided in this chapter. Use of water shall be made in accordance with AS 46.15. (§ 8 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 102 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment added "of land or water" at the end of the catchline, substituted "AS 46.15" for "§ 260 of this chapter and rules and regulations adopted under it or in accordance with any law amending or superseding that section" in the last sentence, and made a series of technical changes throughout the rest of the section.

Collateral references. — 54 Am. Jur. 2d, Mines and Minerals, § 210.

What constitutes reasonably necessary use of the surface of the leasehold by a mineral owner, lessee, or driller under an oil or gas lease or drilling contract, 53 ALR3d 16.

Grant, reservation, or lease of minerals and mining rights as including, without expressly so providing, the right to remove the minerals by surface mining, 70 ALR3d 383.

Sec. 38.05.260. Water rights where claim includes both banks of a stream. [Repealed, § 2 ch 50 SLA 1966. For current law on water usage and appropriation, see AS 46.15.]

Sec. 38.05.265. Abandonment. Failure to (1) properly file for record a certificate of location or a statement of annual labor, or (2) file with the director within the time prescribed a lease application, or (3) pay rental or receive credit for rental, or (4) keep location boundaries clearly marked, all as required by AS 38.05.185 — 38.05.275 and by regulations adopted under these sections, constitutes abandonment of all rights acquired under the mining lease, location, or site involved, and it is subject to relocation by others. If a location is not relocated by another person within one year after the failure, the locator or claimant of the abandoned location, or a successor in interest, may return to relocate it as though it had never been located. A statement of annual labor which does not accurately set out the essential facts is void and of no effect. (§ 9 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 13 ch 93 SLA 1984)

Effect of amendments. — The 1984 amendment deleted "or a copy of a prospecting site location certificate" following "application" in the first sentence and, in the second sentence, substituted "within one year after the failure" for "with one year after such failure, or, in the case of a prospecting site, two years" and "a" for "his" preceding "successor."

Opinions of attorney general. — Requirement under AS 38.05.275 that miners file a copy of the certificate of location if a state-owned riverbed is included in the location is a procedural requirement that should be followed but, if a miner fails to comply with the requirement, he does not forfeit his rights under state law. June 10, 1982, Op. Att'y Gen.

Collateral references. — 54 Am. Jur. 2d, Mines and Minerals, §§ 141 to 145.

58 C.J.S., Mines and Minerals, § 211.

Sec. 38.05.270. Transfers. The sale, lease or other transfer of mining property or interest in mining property shall be recorded or shall be approved by the director in compliance with such regulations as the commissioner may adopt. The heirs and assigns of mining property or interest in mining property have the same rights and duties as their predecessors. (§ 10 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961)

Sec. 38.05.275. Recognition of locations. Mining locations made on state land, including shorelands, tidelands or submerged land or state selected land, under AS 38.05.185 — 38.05.275 or in the manner described in AS 27.10 acquire for the locator mining rights under AS 38.05.185 — 38.05.275, subject to existing claims and to any denial of or restriction in the tentative approval of state selection or patent of the land to the state. If shorelands, tidelands or submerged land is included in a mining location or within the projected boundaries of a mining location made in accordance with this section, the locator shall file a certificate of location under AS 38.05.195. The certificate of location must identify the position of the mining location in the system of rectangular or protracted surveys. If the mining location is made in the manner described in AS 27.10, the commissioner may require that the locator amend the mining location to conform with AS 38.05.185 — 38.05.275 and thereafter to comply with the requirements of AS 38.05.185 — 38.05.275. (§ 1 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 3 ch 96 SLA 1966; am § 14 ch 93 SLA 1984)

Effect of amendments. — The 1984 amendment, in the first sentence substituted "land" for "lands" in the first three places it occurs and "or patent of the land" for "of in the patent of the lands," and, in the second sentence, substituted "land is" for "lands are" and " shall file a certificate of location under" for "is required to file a certificate of location with the division of lands within 90 days following the date of posting the notice of location, in addition to filing a certificate of location as required by," and added the last sentence.

Opinions of attorney general. — This section was intended to provide a solution to the problem presented by miners staking state claims on top of other miners' federal claims in riverbeds where title to the riverbed as between the state and federal government is unresolved. June 10, 1982, Op. Att'y Gen.

This section protects valid federal mining claims which include a state-owned riverbed from top-staking under state law. June 10, 1982, Op. Att'y Gen.

Federal locators have rights under state mining law pursuant to this section if they have complied with all federal requirements under AS 27 of the Alaska Statutes. June 10, 1982, Op. Att'y Gen.

Requirement under this section that miners file a copy of the certificate of location if a state-owned riverbed is included in the location is a procedural requirement that should be followed but, if a miner fails to comply with the requirement, he does not forfeit his rights under state law. June 10, 1982, Op. Att'y Gen.

Collateral references. — 54 Am. Jur. 2d, Mines and Minerals, §§ 53 to 56.

58 C.J.S., Mines and Minerals, §§ 49 to 56.

CHAPTER 86.
MINING RIGHTS

Article

Editor's Note: The mineral-leasing regulations in chapters 82, 83, 84, 86 and 88 of this title, effective September 5, 1974, and distributed in Alaska Administrative Register 51, constitute a comprehensive reorganization and revision of this material, and thus the history line at the end of each section does not reflect the history of the provisions before September 5, 1974, and the section numbering may or may not be related to the numbering before that date.

ARTICLE 1.
GENERAL PROVISIONS

Section

11 AAC 86.100. APPLICABILITY. The provisions of this chapter apply to the acquisition of mineral rights under AS 38.05.185 – 38.05.280. (Eff. 9/15/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 86.105. DISCOVERY DEFINED. "Discovery" means a finding of valuable mineral as would justify an ordinarily prudent person in expending further time, labor, and money upon the property with a reasonable expectation of developing a paying mine. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)
AS 38.05.185(b)

11 AAC 86.110. EXISTING MINING CLAIMS, FEDERAL LEASES AND PERMITS. Nothing in 11 AAC 86 and 11 AAC 88 adversely affects the continued validity of any lease, permit, license, location, or contract, or any rights arising thereunder, granted or issued by the United States, or any rights acquired or being exercised pursuant to the mining laws of the United States, before the land was acquired by the State of Alaska. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 86.115. LOCATIONS BEFORE TENTATIVE APPROVAL. (a) Locations made on state-selected land that has not received tentative approval by the United States for conveyance to the state are made at the locator's risk. Because the state does not have management authority over the land until the selection has been tentatively approved, and cannot authorize exploration work or mining until that time, the locator is responsible for obtaining any necessary permits from the federal land manager and other permitting authorities.

(b) Locations made on state-selected land in accordance with this chapter create prior rights against subsequent locators. Subject to the state's ultimate receipt of patent to the land, locations made on state-selected land in accordance with this chapter become valid mining claims, leasehold locations, or prospecting sites as soon as the federal government tentatively approves the state's selection, unless the tentative approval restricts or bars the locations, or a state mineral closure is in effect on the date of tentative approval. If a leasing restriction is in effect on the date of tentative approval, prior locations are subject to that restriction. If the land is closed to mineral entry or restricted to leasing after the date of tentative approval, valid prior locations are unaffected.

(c) The provisions of AS 38.05.210 – 38.05.240 do not apply to locations made on state-selected land until the state receives tentative approval of the selection from the federal government. The first labor year for a mining claim, and the first rental year for a leasehold location, made on state-selected land begins at noon on the first September 1 after the date the federal government tentatively approves the selection. (Eff. 9/5/74, Reg. 51; am 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.185
AS 38.05.275

11 AAC 86.120. CONDITIONAL MINING LEASES AND LOCATIONS. (a) The director may issue conditional mining leases, or locations may be made, on land the state selects under various federal land grants and on which it has received tentative approval prior to the state's receipt of patent. Leases issued and locations made on tentatively approved land shall be cancelled in whole or in part if the state is denied patent to that land. Rentals prepaid in cash on land to which patent is denied the state may not be refunded except for that pro rata portion of the unexpired lease year.

(b) A lessee or locator on tentatively approved land shall hold the state harmless for damages done by him, or for any claim of any third party, or for any claims that may arise from ownership. If the state receives patent to the land under lease or location, the conditional lease or location has the same standing, force, and effect as an unconditional lease or location issued or made under this chapter. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020(b)(1)

11 AAC 86.125. FAILURE TO COMPLY. (a) The failure on the part of a mining lessee or locator to comply strictly with the provisions of this chapter and the applicable statutes does not invalidate his rights if it appears to the satisfaction of the director that the locator or lessee complied as nearly as possible under the circumstances and that no conflicting rights are asserted by any other person. Upon application, the director or his authorized representative, with the concurrence of the commissioner, may issue a certificate of substantial compliance which states the specific failure on the part of the lessee or locator and the relief granted. The certificate does not cure any defect not

specifically referred to in the certificate. The certificate, when granted, must be recorded in the recording district where the located or leased land is located.

(b) An application for a certificate of substantial compliance must include the name and address of the owner, the name of the location, any serial number assigned by the department to the location or lease, a statement of the specific failure to comply, the reasons for the failure, and any other information the director considers necessary to determine the circumstances of the case. (Eff. 9/5/74, Reg. 51; am 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.185

11 AAC 86.130. FILING AND RECORDING. Repealed 12/31/82.

11 AAC 86.135. MINERAL DEPOSITS OPEN TO LOCATION. (a) Rights in and to deposits of locatable minerals, except on tide and submerged land as specified in (c) of this section, may be acquired by making a mineral location in conformance with AS 38.05.185 – 38.05.275 and 11 AAC 86, unless the deposits are in or on state land that is closed to location. To constitute a valid location, both discovery and posting of the location notice must occur during a time when the land is open to location.

(b) This section constitutes the commissioner's finding, in accordance with AS 38.05.185(a), that selling, leasing, or otherwise disposing of any interest in land other than a locatable mineral interest, with the mineral rights reserved to the state, creates potential use conflicts requiring that mining be allowed only under written leases. If the land remains open to location, any location made on that land after the disposal is a leasehold location.

(c) Rights in and to deposits of locatable minerals on tide and submerged land may be acquired only under the provisions of AS 38.05.250 and 11 AAC 86.500 – 11 AAC 86.570, except that tide and submerged land may be included in a location under AS 38.05.275 if two corners are on or above the line of mean high tide.

(d) If the land upon which a location is made is restricted to mining under lease before the discovery date or the date the location notice was posted, the locator has prior rights only to a lease.

(e) Notice will be given under AS 38.05.945 before an order closing land to mining or mineral location or restricting it to mining under lease is issued, amended, or revoked. (Eff. 9/5/74, Reg. 51; am 5/30/85, Reg. 94)

Authority: AS 38.05.020 AS 38.05.275
AS 38.05.185 AS 38.05.300

11 AAC 86.140. DRAWING OF PRIOR EXISTING LOCATIONS. The requirement under 11 AAC 86.210(4), 11 AAC 86.215(a)(6), 11 AAC 86.410(a)(4), and 11 AAC 86.410(b)(6) that a locator show the relationship of his location to adjacent and contiguous mining claims, leasehold locations, and prospecting sites held by other parties is for informational purposes only. It is not an admission by the locator of the proper location and maintenance, good standing, or validity of those other claims, locations, or sites. (Eff. 9/5/74, Reg. 51; am 12/31/82, Reg. 84)

Authority: AS 38.05.020(b)(1)

11 AAC 86.145. SURFACE USE. (a) The following provisions apply to land for which the state owns the surface:

(1) A locator does not have exclusive use of the surface of the location. A locator may restrict public access to the surface of the location only if authorized to do so under an approved plan of operations or land use permit, to

(A) protect public safety; or

(B) prevent unreasonable interference with the rights of the locator.

(2) A surface structure built or placed within the boundaries of a mining property must be necessary for mineral prospecting, development, extraction, or basic processing, or for the storage of mining equipment. The building or placing of surface structures, and the use of surface structures other than during periods of mining or development, must be approved through a plan of operations or a land use permit. Factors used

by the director in approving the structures or uses will include: access to the property, remoteness of location, security of the operation, planned level of operation, and the current level of activity.

(3) A classification or designation indicating that timber and other forest products of significant value are included within a mining property is prima facie evidence that the land on which the property is located is considered to be "timberlands" for ourposes of AS 38.05.255. The division of forestry must be contacted before using or clearing timber from timberlands.

(b) If the surface estate or interests in the surface estate are owned by a third party, with the minerals reserved to the state under AS 38.05.125, the locator must make provisions under AS 38.05.130 to pay the owner of the surface interests for any damage that may be caused by the use or development of that location. (Eff. 5/30/85, Reg. 94)

Authority: Art. VIII, sec. 11, Alaska Const.
AS 38.04.058
AS 38.05.020
AS 38.05.035
AS 38.05.130
AS 38.05.255
AS 38.05.965

11 AAC 86.150. PLAN OF OPERATIONS INSTEAD OF LAND USE PERMIT. A person intending to conduct mineral exploration or development activities that would require a land use permit under 11 AAC 96 may file a plan of operations for approval instead of applying for a land use permit. The plan of operations must meet the requirements of 11 AAC 86.800. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.850

11 AAC 86.155. SALE, LEASE, OR OTHER TRANSFER. (a) The rights held under a mining location on state land, or any interest in an undivided location, may be sold, leased, or otherwise transferred without the approval of the director. However, the sale, lease, or other transfer must be recorded within 90 days after the date of the transaction and the transfer document must include the current mailing address of all involved parties.

(b) Before a portion of a mining location may be sold or granted, the original location must be physically divided by amending it to reduce its size. A new location must be created on the remaining ground in accordance with this chapter. The original discovery and location dates apply only to the amended location and not to the newly created location. Any sale or grant of rights under either the amended location or the new location must comply with (a) of this section. (Eff. 9/5/74, Reg. 51; am 12/31/82, Reg. 84; am 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.270
AS 38.05.920

Editor's Note: 11 AAC 86.155 replaces former 11 AAC 86.230 which was repealed 5/30/85, Register 94. The history note for 11 AAC 86.155 includes the history of the repealed section.

ARTICLE 2.
STAKING, RECORDING AND MAINTAINING CLAIMS AND LEASEHOLD LOCATIONS

Section
200. Discovery required
205. Marking boundaries
210. Posting location notice
215. Certificate of location
220. Annual labor
225. Service of notice on co-owners
230. (Repealed)

11 AAC 86.200. DISCOVERY REQUIRED. No mining claim location is complete until after the discovery, as defined in 11 AAC 86.105, of locatable minerals within the limits of the claim. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.195

11 AAC 86.205. MARKING BOUNDARIES. The discoverer of a mining claim or leasehold location shall designate the location by erecting at each corner of the location substantial monuments of stone or setting posts, not less than three feet in height nor less than three inches in diameter hewn and marked with the name of the location, the number of the monument beginning with number 1 at the northeast corner and

proceeding in a clockwise direction around the claim, and by cutting out, blazing, or marking the boundary lines so that they can readily be traced. Where it is impracticable to place a monument in its true position, a witness monument shall be erected and marked so as to indicate the true position of the corner. Where locations under common ownership have common corners, a common corner monument may be used. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.195
AS 38.05.205

11 AAC 86.210. POSTING LOCATION NOTICE. The locator of a mining claim or leasehold location shall personally, or through an agent, post a notice on the monument at the northeast corner of the location. The notice must contain

(1) the name or number of the mining claim or leasehold location;

(2) the date of the locator's discovery and the date of posting the notice of location;

(3) the length and width of the mining claim or leasehold location in feet;

(4) a sketch depicting, to the best of the locator's knowledge, the relationship of the mining claim or leasehold location to adjoining and contiguous mining claims, leasehold locations, and prospecting sites, and;

(5) the name and current mailing address of each locator and the signature of each locator or of the locator's agent. (Eff. 9/5/74, Reg. 51; am 12/31/82, Reg. 84; am 5/30/85, Reg. 94)

Authority: Art. VIII, sec. 11, Alaska Const.
AS 38.05.020
AS 38.05.195
AS 38.05.205

11 AAC 86.215. CERTIFICATE OF LOCATION. (a) The locator of a mining claim or leasehold location on state land shall, within 90 days after the date of the posting of the notice of location, record a certificate of location in conformance with AS 38.05.195. The certificate of location must be recorded on a form provided by the division, a copy of that form, or a form approved by the director, and must

(1) contain the name or number of the location;

(2) contain the date of the locator's discovery and the date of posting the notice of location;

(3) contain the length and width of the location in feet;

(4) contain the name and current mailing address of each locator and the signature of each locator or of the locator's agent;

(5) indicate the recording district in which the claim is located;

(6) include a map at an indicated scale of 1:63,360 (1 inch = 1 mile) or a more detailed scale which shows the boundaries of the claim or leasehold location, the dominant physical features of the land, the protracted or surveyed section lines surrounding the location and, to the best of the locator's knowledge, the relationship of the location to adjacent and contiguous mining claims, leasehold locations and prospecting sites; if more than one contiguous location is being recorded simultaneously, a single map showing all of the locations may be attached to one of the certificates of location if the document to which the map is attached is cross-referenced on each certificate of location; and

(7) indicate every township, range, meridian, section, and quarter section in which the claim is located.

(b) Failure to file for record a certificate of location within the time specified in (a) of this section, constitutes an abandonment of the claim or leasehold location.

(c) Repealed 5/30/85.

(d) Repealed 5/30/85.

(e) Repealed 5/30/85. (Eff. 9/5/74, Reg. 51; am 12/31/82, Reg. 84; am 5/30/85, Reg. 94)

Authority: AS 38.05.020 AS 38.05.205
AS 38.05.195 AS 38.05.265
AS 38.05.200 AS 44.37.025

11 AAC 86.220. ANNUAL LABOR. (a) Except as provided in 11 AAC 86.115, the first

labor year begins at noon on the first September 1 following the date a location notice is posted under 11 AAC 86.210. Each subsequent annual labor year begins at noon on September 1.

(b) Work performed outside the boundaries of the location must develop or benefit the location to qualify as annual labor. Transportation of workers or equipment to or from the location does not qualify as annual labor. Drilling or excavating, including ore extraction, or geological, geochemical, geophysical, or airborne surveys, as provided for in AS 38.05.240, may qualify as annual labor.

(c) During each year in which the performance of annual labor is required or within 90 days after the close of that annual labor year, the owner of each mining claim or leasehold location on state land or some other person having knowledge of the facts, shall make and file for record an affidavit describing the performance of the labor or the making of improvements for the immediately preceding assessment year and any labor in excess of that required for the preceding year that is to be applied to the subsequent year or years. The affidavit must state

(1) the name or number of the mining claim or leasehold location, a description of where it is situated, and the name and current mailing address of each owner;

(2) the number of days' work done and the character and value of the improvements made;

(3) the dates of performance of the labor and of the making of improvements, and the name and mailing address of the person who did the work;

(4) the actual amount paid for the work and improvements, and, if the work was not done by the owner or the owner's lessee, a statement of who paid.

(d) An affidavit required by this section may be made before any officer authorized to administer oaths, or, when no official empowered to administer oaths is available, in the manner provided by AS 09.63.020.

(e) Repealed 5/30/85.

(f) Repealed 5/30/85.

(g) An affidavit of annual labor may be amended under AS 38.05.210(e). However, an affidavit that does not set out the essential facts is void under AS 38.05.265 and may not be amended. (Eff. 9/5/74, Reg. 5; am 12/31/82, Reg. 84; am 5/30/85, Reg. 94)

Authority: AS 27.05.010 AS 38.05.242
AS 38.05.020 AS 38.05.265
AS 38.05.210 AS 44.37.025
AS 38.05.240

11 AAC 86.225. SERVICE OF NOTICE ON CO-OWNERS. The service of written personal notice authorized by AS 38.05.215 shall be made by certified mail only. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.215

11 AAC 86.230. RECORDATION OF SALE, LEASE, OR OTHER TRANSFER. Repealed 5/30/85.

ARTICLE 3.
UPLAND MINING LEASES.

Section
300. Preference right by leasehold location
305. Application for lease
308. Rental
309. Showing of discovery
310. (Repealed)
311. Survey of exterior boundary
312. Lease duration
315. (Repealed)
320. (Repealed)
321. Surrender
325. (Repealed)

11 AAC 86.300. PREFERENCE RIGHT BY LEASEHOLD LOCATION. The preference right to a lease that is acquired by establishing and maintaining a leasehold location remains in existence until a lease is issued or denied, the leasehold location is adjudicated and found invalid, the leasehold location is abandoned, or the state's selection of the land is rejected or relinquished. (Eff. 9/5/74, Reg. 51; am 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.205

11 AAC 86.305. APPLICATION FOR LEASE. (a) When the division receives a copy of a certificate of location for a location on state land restricted to mining under lease, the division will notify the locator of the leasing requirement.

(b) The division will publish the notice required by AS 38.05.205(a) and subsequently mail a lease application form to the locator only when

(1) it learns that the leasehold locator is ready to begin production or, if authorized by sec. 5, ch. 108, SLA 1981, as amended by sec. 1, ch. 90, SLA 1985, is already producing;

(2) the leasehold locator requests a lease application form; or

(3) the owner of a mining claim requests a lease application form.

(c) The application must include a sworn affidavit stating, for each mining claim or leasehold location,

(1) that discovery, location, and filing were performed as required by law;

(2) the type and nature of the mineral discovery; and

(3) the position of the discovery in relation to the northeast corner of the location.

(d) A lease application will be rejected and the location will be void if the director determines, after a review of all filing documents, a field examination, or analysis of other information, that

(1) the requirements of AS 38.05.185 - 38.05.275 have not been met;

(2) the land was not open to location when the mining claim or leasehold location was made; or

(3) the land is closed to mining.

(e) A lease application received for a location on state-selected land that has not received tentative approval by the United States for conveyance to the state, or on other land to which the state does not hold title to the locatable mineral estate, will be rejected.

(f) If conflicting rights are asserted by another locator and the director decides not to adjudicate the conflict, the lease application will be rejected and the parties advised to resolve the conflict. A new application may be filed after the conflict has been resolved. The director will also send a copy of the notice by certified mail to the holders of apparent conflicting rights, as shown on state land records, that a lease application is being processed.

(g) An application that does not meet the requirements of this section, or that otherwise deviates from the form provided by the division, will not be adjudicated and will be returned to the applicant with an explanation of the reason. A new application may be filed later. (Eff. 9/5/74, Reg. 51; am 12/31/82, Reg. 84; am 5/30/85, Reg. 94)

Authority: AS 38.05.020 AS 38.05.205
AS 38.05.035 AS 38.05.265
AS 38.05.185

11 AAC 86.308. RENTAL. (a) Rental for a leasehold location or leasehold must be made payable to the Alaska Department of Revenue and be tendered to the accounting office of the Department of Natural Resources in Anchorage. It must be accompanied by a statement containing the owner's name and address, any serial number assigned by the department to the leasehold location or lease, and, if applicable, the name of the leasehold location. If more annual rental is paid, or work performed instead of rental, than is due under this section, the excess value up to $800 per leasehold location may be applied against rental due during subsequent years; excess value accrued for a leasehold location may be applied against rental due after conversion to lease.

(b) The following provisions apply to rental payments for leasehold locations:

(1) The annual rental is $200 per leasehold location;

(2) The rental year is the same as the annual labor year established under 11 AAC 86.220(a);

(3) If work done on or for the benefit of the

leasehold location is to be credited against the rental, it must be done before the end of the rental year and must be work acceptable under 11 AAC 86.220;

(4) Within the time specified in 11 AAC 86.220(c), the holder of a leasehold location shall meet the rental obligation by paying the rental due, or by recording an affidavit in the same form and manner as required under 11 AAC 86.220 documenting work done within the rental year to be credited against rental, or by a combination of the two. A previous filing of excess work instead of rental does not relieve the leasehold locator of the obligation to record an affidavit in order to receive credit against the rental due;

(5) If the leasehold locator fails to make either the timely rental payment or the timely recording of an affidavit of work instead of rental, the leasehold location automatically terminates as abandoned under AS 38.05.265;

(6) If a rental payment is timely submitted to the department, or an affidavit of work in lieu of rental is timely recorded, but the director finds that the payment made or the expenditures creditable against rental are less than $200 per leasehold location, the locator will be granted 30 days after receipt of a notice from the director to submit the additional rental due. If the default is not corrected by the locator within 30 days, the leasehold location automatically terminates without further notice.

(c) The following provisions apply to rental payments for leaseholds.

(1) The rental year begins on the effective date of the lease;

(2) Rental is $10 per acre during the first five years of the lease, increasing to $15 per acre during the next five years of the lease, and increasing again to $20 per acre during the next 10 years;

(3) Rental must be paid, or an affidavit of work submitted to the department, within 90 days after the anniversary date of the lease;

(4) An affidavit of work performed instead of rental must meet the requirements of 11 AAC 86.220(b) - (g), except that it need not be recorded;

(5) If the lessee fails to make either the timely rental payment or the timely recording of an affidavit of work instead of rental, the lease automatically terminates as abandoned under AS 38.05.265;

(6) If a rental payment or affidavit of work is timely submitted to the department, but the director finds that the payment made or the expenditures creditable against rental are less than the amount due, the mining lessee will be granted 30 days after receipt of a notice from the director to submit the additional rental due. If the default is not corrected by the mining lessee within 30 days, the lease automatically terminates without further notice. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020 AS 38.05.205
AS 38.05.035 AS 38.05.210
AS 38.05.185 AS 38.05.265

11 AAC 86.309. SHOWING OF DISCOVERY. (a) The director will, in his or her discretion, at any time, require a showing of discovery for each mining claim or leasehold location included within a leasehold or listed in a lease application.

(b) The showing of discovery required of a lessee must relate to the discovery originally sworn to in the application for a lease. However, the showing may be supported with subsequently acquired data.

(c) The statement of discovery sworn to in a lease application is not confidential, but any supplemental geological, geophysical, or engineering data supplied in support of a showing of discovery will, upon the lessee's request, be kept confidential by the state and by any agents or experts consulted or retained by the state to assist in the determination of the existence of a discovery.

(d) A mining claim or leasehold location determined by the director to lack a discovery is void and will be excluded or removed from the

leasehold or the lease application. (Eff 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.205

11 AAC 86.310. BOND. Repealed 5/30/85.

11 AAC 86.311. SURVEY OF EXTERIOR BOUNDARY. (a) Unless otherwise specified by the director, within 10 years after the effective date of the lease, the exterior boundary of the leasehold must be surveyed in accordance with 11 AAC 53 and instructions issued by the department.

(b) The leasehold's exterior boundary must be kept brushed or, in treeless terrain, flagged or otherwise marked so as to be reasonably visible, until the survey is completed. It is not necessary to clear interior boundaries if mining claims or leasehold locations included within the leasehold adjoin each other. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.205

11 AAC 86.312. LEASE DURATION. A lease will be issued for a term of 20 years, subject to renewal as provided in AS 38.05.205(c). However, the director will, in his or her discretion, set a different term if justified on the basis of the expected mine life. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.205

11 AAC 86.315. TERMINATION. Repealed 5/30/85.

11 AAC 86.320. RELINQUISHMENT. Repeaed 5/30/85.

11 AAC 86.321. SURRENDER. Unless otherwise specified by the director, 11 AAC 82.635 applies to the surrender or relinquishment of an upland mining lease. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.205

11 AAC 86.325. TRANSFERS. Repealed 5/30/85.

ARTICLE 4.
PROSPECTING SITES

Section
400. Purpose and rights acquired
405. Boundaries and corners
410. Prospecting site location notice and certificate of location
415. (Repealed)
420. (Repealed)
425. Prospecting work
430. Extension
435. Staking claims on expired permits

11 AAC 86.400. PURPOSE AND RIGHTS ACQUIRED. (a) A prospecting site may be located at the option of the prospector and nothing in this chapter requires that a prospecting site location must be made before any prospecting work may be done on state land.

(b) The holder of a prospecting site on state land has the exclusive right, subject to any prior rights, to use the surface within the boundaries of the location for performing work acceptable as prospecting work under 11 AAC 86.425 and also has the exclusive right to stake mining claims or leasehold locations within the boundaries of the prospecting site. The exclusive right begins when the corners and boundaries are marked and the location notice posted as required in 11 AAC 86.405 and 11 AAC 86.410 and terminates as provided in 11 AAC 86.420. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.245

11 AAC 86.405. BOUNDARIES AND CORNERS. Boundaries and corners of a prospecting site must be marked in accordance with 11 AAC 86.205. (Eff. 9/5/74, Reg. 51; am 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.245

11 AAC 86.410. PROSPECTING SITE LOCATION NOTICE AND CERTIFICATE OF LOCATION. (a) On a monument at the northeast corner of the prospecting site location, the locator shall post a notice. The notice must state

(1) the name or number of the prospecting site location;

(2) the date of posting the notice of location;

(3) the length and width of the prospecting site location in feet;

(4) a sketch depicting, to the best of the locator's knowledge, the relationship of the prospecting site to adjacent and contiguous prospecting sites, mining claims, and leasehold locations; and

(5) the name and current mailing address of each locator and the signature of each locator or of the locator's agent.

(b) The holder of a prospecting site location shall, within 90 days after the date of posting the location notice, file for record a certificate of location in the recording district in which the location is made. The certificate of location must

(1) contain the name or number of the prospecting site location;

(2) contain the date of posting the notice of location;

(3) contain the length and width of the prospecting site location in feet;

(4) contain the name and current mailing address of each locator and the signature of each locator or of the locator's agent;

(5) indicate the recording district in which the prospecting site is located;

(6) include a map at an indicated scale of 1:63,360 (1 inch = 1 mile) or a more detailed scale which shows the boundaries of the prospecting site, the dominant physical features of the land, the protracted or surveyed section lines surrounding the prospecting site and, to the best of the locator's knowledge, the relationship of the prospecting site to adjacent and contiguous mining claims, leasehold locations, and prospecting sites; and

(7) indicate every township, range, meridian, section, and quarter section in which the prospecting site is located.

(c) Failure to file for record a certificate of location within 90 days, as provided in (b) of this section, constitutes abandonment of all rights in the prospecting site location. After abandonment the site becomes open to location by others. If no other person relocates that site within one year, the original locator or that locator's successor in interest may return to relocate it as though it had never been located.

(d) Repealed 5/30/85.

(e) Repealed 5/30/85.

(f) Repealed 5/30/85.
(Eff. 9/5/74, Reg. 51; am 12/31/82, Reg. 84; am 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.245
AS 38.05.265

11 AAC 86.415. RECORDATION OF SALE, LEASE, OR OTHER TRANSFER. Repealed 5/30/85.

11 AAC 86.420. DURATION. Repealed 5/30/85.

11 AAC 86.425. PROSPECTING WORK. (a) Within one year after the date of posting the location notice for a prospecting site, acceptable work amounting to at least $5 per acre for the area enclosed within the prospecting site location must be performed. The amount of work required per acre during the first extension is also $5; but, if further extensions are granted, the amount of work required during each additional year is $10 per acre.

(b) The only prospecting work acceptable for holding prospecting sites is

(1) drilling or excavating; or

(2) geological, geophysical, or geochemical work by persons qualified to do the work. (Eff. 9/5/74, Reg. 51; am 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.245

11 AAC 86.430. EXTENSION. (a) A request for extension of a prospecting site must be filed in writing with the division before the prospecting site expires.

(b) The request for extension must

(1) contain the name and current mailing address of the locator;

(2) contain the name and any serial number assigned by the department to the prospecting site;

(3) state why an extension is needed; and

(4) be signed by the owner or the owner's agent.

(c) The director will, in his or her discretion, request that additional information be supplied to support the request for extension.

(d) If an extension is granted, the prospecting site locator shall, within 90 days after receiving the notice of extension, record the notice in the recording district in which the site is located. (Eff. 9/5/74, Reg. 51; am 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.245

11 AAC 86.435. STAKING CLAIMS ON EXPIRED PERMITS. The expiration of a permit does not prevent the locator or his successor from staking a mining claim or leasehold location in the area formerly covered by his prospecting site location if no intervening locations have been made by others. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020

ARTICLE 6.
MILLSITES

Section
600. Millsites

11 AAC 86.600. MILLSITES. If a mining claimant, lessee, locator, or assignee of a leasehold desires to construct a mill, reduction plant or provide tailing disposal on state land not covered by a claim or leasehold, upon application, the director shall grant him a use permit for the necessary land upon satisfaction of the requirements of the division. A reasonable rate or fee schedule shall be charged for all such use. A permit remains in good standing as long as the fees are paid and the land is not used for a purpose other than that for which the permit is granted. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020
AS 38.05.255

ARTICLE 7.
MINING PRODUCTION LICENSES

Section
700. Applications for production licenses
705. Application review
710. Public notice
715. Review after public notice
720. Commissioner's determination to adjudicate
725. Adjudication by commissioner
730. No adjudication by commissioner
735. Interim mining
740. Transfer of a production license
745. Expiration of a production license
750. Definitions

11 AAC 86.700. APPLICATIONS FOR PRODUCTION LICENSES. (a) An application for a mining production license is required of the owner or owners of a mining claim under AS 38.05.195 or a mining leasehold location or mining lease under AS 38.05.205 who are prepared to initiate or continue production of minerals for sale. An application is required for each state mining claim, mining leasehold location, or mining lease from which that production is anticipated. A group of contiguous mining claims, mining leasehold locations, or mining leases under common ownership may be included on one production license application. A license for multiple claims, leasehold locations or leases will be considered a license for each individual mining claim, mining leasehold location, or mining lease.

(b) An application for a mining production license must be on a form provided by the department or an exact reproduction of that form.

(c) An application must be made under oath by the holder of the mining claim, leasehold location, or upland mining lease and must contain

(1) the names and current mailing addresses of all owners of the mining claim, mining leasehold location, or mining lease;

(2) the name and serial number (if assigned by the division of minerals and energy management) of the mining claim, mining leasehold location, or mining lease;

(3) a description of the location of the mining claim, mining leasehold location, or mining lease, including the section, township, range, and meridian and such other detail as the commissioner requires in the application;

(4) the statement that either

(A) each mining claim or leasehold location has been discovered, located, filed, and maintained in accordance with AS 38.05.185 – 38.05.280, or

(B) a state mining lease has been issued under AS 38.05.205;

(5) a statement of the date that the applicant either began or expects to begin production of minerals for sale from that property; and

(6) a statement that the applicant or applicants are qualified to own the mining claim, mining leasehold location, or mining lease under AS 38.05.190.

(d) Applications which do not meet the requirements of this section or which otherwise deviate from the form provided by the department will be rejected and returned to the applicant with an explanation of the reason for rejection. An applicant may file another application after the rejection of a previous application.
(Eff. 5/12/83, Reg. 86; am 5/30/85, Reg. 94)
Authority: AS 38.05.020
AS 38.05.035
AS 38.05.207

11 AAC 86.705. APPLICATION REVIEW. (a) Upon receipt of an application for a production license for either a mining claim or a mining leasehold location, the commissioner will review the department's records to determine that location certificates and annual labor affidavits have been properly filed. The sworn intent of the applicant to commence production is sufficient evidence to establish that a valuable discovery has been made for purposes of a production license issued under AS 38.05.207.

(b) Upon receipt of an application for a production license for a state mining lease, the commissioner will review the department's records to determine that the applicant has complied with the terms of the lease.

(c) If the commissioner discovers that a location certificate or an annual labor affidavit for a mining claim or leasehold location has not been properly filed, or the terms of a mining lease have not been met, processing of the application will be suspended until either the commissioner is satisfied that compliance has been achieved or the commissioner determines under AS 38.05.185(b) that the applicant has complied as nearly as possible under the circumstances of the case and that no conflicting rights are asserted. The commissioner will notify the applicant of any noncompliance that causes the suspension of processing of the application. The applicant may, within the time period specified in the notice, either demonstrate compliance or request a certificate of substantial compliance. The application will be rejected if the applicant does not timely respond to the notice or if the applicant neither demonstrates compliance nor satisfies the commissioner that a certificate of substantial compliance is justified.

(d) If the location is on state-selected land that has not received tentative approval by the United States for conveyance to the state, or is on land to which the state does not hold title to the locatable mineral estate, the application will be rejected. The commissioner will notify the applicant of the rejection of the application.
(Eff. 5/12/83, Reg. 86; am 5/30/85, Reg. 94)
Authority: AS 38.05.020
AS 38.05.035
AS 38.05.207

11 AAC 86.710. PUBLIC NOTICE. (a) Within 60 days after the commissioner is satisfied that the applicant is in compliance as provided in 11 AAC 86.705, the department will publish, in a paper of general circulation in the area of the mining claim, mining leasehold location, or mining lease, a notice which contains:

(1) the name of the applicant along with a description of the location of the area subject to the production license application identifying the township, range, and section of the applicant's claim, leasehold location, or lease;

(2) the statement that within 60 days the department intends to issue a production license to the applicant authorizing the production of minerals for sale, subject to other applicable statutes and regulations, unless the commissioner receives a written statement from a person asserting conflicting rights;

(3) the statement that any written assertion of conflicting rights

(A) must be sent to the commissioner at an address set out in the public notice so that it is received within 30 days after the date of the public notice; and

(B) must set out the nature of the conflicting rights and the basis for the assertion; at a minimum, the written assertion must refer to the serial numbers assigned to the mining claims, mining leasehold locations, or mining leases which form the basis for the conflicting rights, or must include copies of the certificates of location or leases for those mining claims, mining leasehold locations, or mining leases;

(C) may be submitted with any additional documents, affidavits, or information which may more fully set out for the commissioner the nature of the conflicting rights and the reasons why the person is asserting those rights; this additional information must be submitted to the commissioner before the expiration of the 30-day period, unless the commissioner authorizes late submission.

(b) The commissioner will, in his or her discretion, combine individual notices with notices of other applications either in the same general area or statewide.

(c) The commissioner will also send a copy of the notice to the holders of any apparent conflicting rights as indicated on state land records available to the department at the time the application is reviewed. The copy will be sent by certified mail to the address of record in the department's files. If the copy of the notice is returned by the mail service, the department will assume no further obligation to notify the third party. (Eff. 5/12/83, Reg. 86; am 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.207

11 AAC 86.715. REVIEW AFTER PUBLIC NOTICE. (a) If no conflicting rights are asserted, the commissioner will issue the production license to the applicant between 30 days and 60 days after the date that the public notice of the application appears in the paper.

(b) If the commissioner receives an assertion of conflicting rights, the commissioner will send to the applicant a copy of the assertion within 10 days after receiving it. Within 30 days after receiving the assertion, the commissioner will send to the applicant, as well as to the party or parties asserting conflicting rights, the notice of the commissioner's determination, under 11 AAC 86.720, whether or not to adjudicate the matter. (Eff. 5/12/83, Reg. 86; am 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.207

11 AAC 86.720. COMMISSIONER'S DETERMINATION TO ADJUDICATE. (a) The commissioner will not adjudicate matters involving difficult and protracted conflicts between mining claimants or lessees. However, the commissioner will, in his or her discretion, adjudicate minor conflicts which do not involve complicated factual or legal issues. This discretionary authority will be used sparingly.

(b) If the commissioner determines that the assertion of conflicting rights is a minor conflict which does not involve complicated factual or legal issues, the commissioner will, in his or her discretion, adjudicate the matter following the procedures set out in 11 AAC 86.725.

(c) If the commissioner determines that the assertion of conflicting rights does involve complicated factual or legal issues, then the commissioner will follow the procedures set out in 11 AAC 86.730.

(d) Reconsideration and appeal of the commissioner's determination under this section may be requested and, if requested, will be conducted under the procedures set out in 11 AAC 88.155 - 11 AAC 88.185. (Eff. 5/12/83, Reg. 86)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.207

11 AAC 86.725. ADJUDICATION BY COMMISSIONER. (a) If the commissioner decides to adjudicate the matter concerning conflicting rights, the commissioner will request the applicant to respond in writing to the written assertion of conflicting rights submitted by a third party under the provisions of 11 AAC 86.710 within 30 days after mailing to the applicant notice of the commissioner's determination to adjudicate.

(b) The commissioner will issue his or her decision within 30 days after either the date of receipt of the applicant's response statement or the date that such a statement was due, whichever is earlier. The commissioner will, in his or her discretion, grant an extension of time for filing a statement requested under (a) of this section.

(c) If, upon review of written statements submitted to the commissioner under this section and 11 AAC 86.710, the commissioner determines that the matter of conflicting rights involves complicated factual or legal issues, the commissioner will decide not to adjudicate the matter and will follow the procedures set out in 11 AAC 86.730.

(d) Reconsideration of the commissioner's decision may be requested and, if requested, will be conducted under the procedures set out in 11 AAC 88.155 – 11 AAC 88.185. (Eff. 5/12/83, Reg. 86)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.207

11 AAC 86.730. NO ADJUDICATION BY COMMISSIONER. (a) If the commissioner decides not to adjudicate a matter concerning an assertion of conflicting rights, and the application for a production license does not involve an area which is the subject of a state mining lease or a mining production license held by a person other than the applicant, then the commissioner will notify the parties that

(1) the commissioner has decided not to adjudicate the matter,

(2) the courts are the appropriate fora for resolution of the matter, and

(3) unless prevented by a court order, the commissioner will issue a production license to the applicant no sooner than 30 days but before 60 days after the date of mailing of the notice.

(b) If the commissioner decides not to adjudicate a matter concerning an assertion of conflicting rights, and the application for a production license involves an area which is the subject of a state mining lease or a mining production license held by a person other than the applicant, then processing of the application for the production license will be suspended until the conflict with the state mining lease or mining production license held by a person other than the applicant is resolved, and the commissioner will notify the parties that

(1) the commissioner has decided not to adjudicate the matter;

(2) the courts are the appropriate fora for resolution of the matter; and

(3) until the conflict with the state mining lease or mining production license held by a person other than the applicant is resolved, the commissioner will not issue a production license to the applicant. (Eff 5/12/83, Reg. 86)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.207

11 AAC 86.735. INTERIM MINING. After filing an application, and pending completion of the public notice requirement and the issuance of the production license, the applicant may, at his or her own risk, produce minerals for sale from the property unless either the application is rejected under 11 AAC 86.700(d) or the applicant is notified that processing of his or her production license has been suspended or rejected under 11 AAC 86.705 or 11 AAC

86.730(b). (Eff. 5/12/83, Reg. 86; am 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.207

11 AAC 86.740. TRANSFER OF A PRODUCTION LICENSE. (a) A mining production license passes with a conveyance of the mining claim, mining leasehold location, or mining lease that is the subject of the production license.

(b) If a production license covers multiple mining claims, mining leasehold locations, or mining leases, and not all of the claims, leasehold locations, or leases are transferred, the original production license will be amended to include only those claims that have been retained by the original holder of the production license, and a second production license will be issued covering the transferred claims, leasehold locations, or leases. (Eff. 5/12/83, Reg. 86; am 5/30/85, Reg. 94)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.207

11 AAC 86.745. EXPIRATION OF A PRODUCTION LICENSE. (a) A production license will be issued for an indeterminate period of time but will expire when

(1) the mining claim or mining leasehold location for which the production license was issued is abandoned, or

(2) the mining lease for which the production license was issued expires or is terminated or relinquished.

(b) If individual mining claims or mining leasehold locations within a contiguous group included in a multiple production license are abandoned, the abandoned claims or leasehold locations will no longer be covered by the multiple production license. (Eff. 5/12/83, Reg. 86)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.207

11 AAC 86.750. DEFINITIONS. As used in 11 AAC 86.700 – 11 AAC 86.750

(1) "conflicting rights" means ownership interests in the locatable mineral rights which are to be the subject of the production license;

(2) "production of minerals for sale" means

(A) any production from a mining operation, other than an exploration project, on a mining claim, mining leasehold location, or mining lease, or a contiguous group of mining claims, mining leasehold locations, or mining leases of 30 or more days during an assessment year; or

(B) any production, including production during exploration, from a mining claim, mining leasehold location, or mining lease, or contiguous group of mining claims, mining leasehold locations, or mining leases of gross value greater than $10,000 during an assessment year. (Eff. 5/12/83, Reg. 86)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.207

Editor's Note: Other definitions applicable to 11 AAC 86.700 – 86.750 appear in 11 AAC 88.185.

ARTICLE 8.
GENERAL PROSPECTING PERMIT AND LEASE PROVISIONS.

Section
800. Plan of operations
805. Bond
810. Suspension and termination
815. Transfers

11 AAC 86.800. PLAN OF OPERATIONS. (a) A plan of operations that describes the activities proposed to take place under an upland mining lease, offshore prospecting permit, or offshore mining lease must be submitted to and approved by the director before activities may occur under the prospecting permit or lease. An approved plan of operations takes the place of the land use permit or miscellaneous land use permit that would be required under this title for unleased land. If proposed lease or permit activities are so minor that they could take place

without a land use permit on unleased land, a plan of operations is not required.

(b) The plan must show how the operator proposes to comply with performance standards, stipulations, or conditions applicable to the prospecting permit or lease. The proposed plan of operations must address the areas to be mined, location and design of settling ponds, tailings disposal, overburden storage, permanent or temporary diversions of water, access routes, reclamation plans, and other actions necessary to conduct the operation. The plan must include statements and maps or drawings setting out the following, as applicable:

(1) the sequence, schedule, and duration of the proposed operations;

(2) size and purpose of the operations;

(3) number of pieces of equipment and people working on the project;

(4) amount of material to be handled, processed, or removed, and how the material will be processed;

(5) method of tailings disposal;

(6) area of timber to be cleared, amount to be used, and clearing methods;

(7) overland access routes to be used, and whether new roads, landing strips, or other new transportaton facilities will be needed;

(8) reclamation that will be carried out, including a timetable for each step in the reclamation, an estimate of the cost, and a description of the measures to ensure that all debris is disposed of in a sound manner;

(9) the actions to be taken to avoid or minimize detrimental effects on fish and wildlife and their habitats;

(10) amount and source of water to be used;

(11) location and size of camp facilities;

(12) any site the operator wants the division to close to public access in order to protect public safety or to prevent unreasonable interference with the rights of the operator;

(13) how the operator's plans for compliance with other applicable laws and regulations, including size and location of required facilities or improvements, will affect resources under the jurisdiction of the department; and

(14) any additional information required by the director to assist in evaluating the proposed plan of operations.

(c) Any geological, geophysical, or engineering data supplied by the applicant as part of the plan of operations will be kept confidential at the applicant's request. Confidential data must be clearly identified by the applicant and separated from information not qualifying as confidential.

(d) The plan of operations may cover up to a ten-year period. If the approved work is not completed before the end of the stated period, the director will, in his or her discretion, allow an extension rather than requiring a new plan to be filed. An amendment must be filed for approval if the operator wants to deviate significantly from the approved plan. If the time period the operator chooses to cover in the plan is less than the intended life of the mine, the plan must show how the proposed operations relate to subsequent operations.

(e) The plan must be submitted to the department at least 50 days before operations under the prospecting permit or lease are proposed to begin. Before operations may begin, the plan must be approved in writing by the division after consulting with the Department of Fish and Game, Department of Environmental Conservation, and other affected agencies.

(f) For the operator's convenience, the proposed plan may include information needed to apply for approvals from other departments or local and federal agencies under other applicable laws and regulations, such as effects of the operation on air and water quality, disposal of toxic wastes, effects on navigation, and effects on anadromous fish habitat. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020 AS 38.05.205
AS 38.05.035 AS 38.05.250

11 AAC 86.805. BOND. (a) 11 AAC 82.600 applies to offshore prospecting permits, offshore mining leases, and upland mining leases. If a bond is required, the applicant, permittee, or lessee will be given notice of the requirement and its effective date. At least 30 days will be allowed to provide the bond

(b) The director will, in his or her discretion, if a significant change in the scope of operations occurs, or before approving an assignment, alter the amount of the bond.

(c) A bond provided under this section will be released upon the following conditions:

(1) the expiration or relinquishment of the lease or prospecting permit; and

(2) the reclamation of the lease area or prospecting permit area as set out and approved in the plan of operations. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020 AS 38.05.205
AS 38.05.035 AS 38.05.250
AS 38.05.130

11 AAC 86.810. SUSPENSION AND TERMINATION. If the permittee or lessee fails to comply with applicable statutes and regulations, or to comply with the provisions of the prospecting permit or lease (except for failure to pay rental, which results in termination under AS 38.05.265), and the failure continues for 30 days after service of written notice and an opportunity to be heard, the director will, in his or her discretion,

(1) suspend production or operations leading to production until compliance is achieved, during which the obligation to pay rental continues, or

(2) terminate the permit or lease. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020 AS 38.05.250
AS 38.05.185 AS 38.05.265
AS 38.05.205

11 AAC 86.815. TRANSFERS. An offshore prospecting permit, offshore mining lease, or upland mining lease may be transferred in accordance with 11 AAC 82.605 – 11 AAC 82.630. (Eff. 5/30/85, Reg. 94)

Authority: AS 38.05.020(b)(1)
AS 38.05.270

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

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

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

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

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

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

MATTHEWS, Justice.

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

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

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

I. PROCEEDINGS BELOW

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

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

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

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

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

II. STANDING TO MAINTAIN DECLARATORY JUDGMENT ACTION

A. Standing

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

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

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

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

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

(Footnote Continued)

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

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

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(Footnote Continued)

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

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

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

Id. at 1304.

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

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

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

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

Id. at 1210 (footnote omitted).

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

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

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

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

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3. Hoblit, 678 P.2d 1337.

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

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

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

(Footnote Continued)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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12. The proviso in the School Lands Act states:

(Footnote Continued)

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

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

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

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(Footnote Continued)

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

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

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

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

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

A. General Principles of Mineral Disposition

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Origin of Section 6(i)

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

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

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

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

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(Footnote Continued)

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

43 U.S.C. § 870(b) (1983) provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The 103,350,000 acre grant ultimately provided in

(Footnote Continued)

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

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(Footnote Continued)

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

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

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

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

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

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

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

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

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

(Footnote Continued)

discussed, the restriction was taken from the 1927 School Lands

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(Footnote Continued)

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

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

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

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

(Footnote Continued)

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

(Footnote Continued)

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

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

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

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

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

(Footnote Continued)

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

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

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

(Footnote Continued)

v. Lewis, we explained that

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

559 P.2d at 638.

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

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

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

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

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

(Footnote Continued)

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

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(Footnote Continued)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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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.

1,000.00

appellant

appellant

5-11-87 Matthews

4-29-87 Chubb

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

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,	)
vs.	)
STATE OF ALASKA; ALASKA DEPARTMENT OF NATURAL RESOURCES, ESTHER WUNNICKE, Commissioner, Department of Natural Resources,	)
Defendants,	)
ALASKA MINERS ASSOCIATION, FAIRBANKS NORTH STAR BOROUGH, JOSEPH VOGLER,	)
Defendants-Intervenors.	)

Case No. 3AN-83-9862 Civ.

DECLARATORY JUDGMENT

Pursuant to the remand in this action by the Alaska Supreme Court in Trustees for Alaska v. State, 736 P.2d 329 (Alaska 1987), this Court has considered the Supreme Court's decision, plaintiffs' proposed declaratory judgment order and defendants' and defendant-intervenors' responses thereto. The Court finds and declares as follows:

1. The State of Alaska's current system allowing the extraction of mineral deposits from state lands, AS 38.05.185 et seq., violates Section 6(i) of the Alaska Statehood Act because it does not require the payment of rents or royalties from state lands whose mineral character was known at the time of state selection.

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

3. Plaintiffs, as successful public interest litigants in this action, are entitled to their full, reasonable attorneys' fees and costs incurred during the litigation of this case. Plaintiffs shall file a proper application for attorneys' fees and costs along with detailed documentation therefor, pursuant to Civil Rules 82 and 79.

DATED this 9th day of November, 1987.

DOUGLAS J. SERDAHELY
Superior Court Judge

I certify that on 11-9-87
a copy of the above was mailed/
~~hand-delivered~~ to each of the
attorneys and/or individuals at
their addresses of record. Adler
Bursing
Hoffstetter
Reeves
Wickwire
Andrews

E. Mueller
Secretary to Judge Serdahely

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. ability to stake claims

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. opposed to use-it-or-lose policy

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". as yet undefined class of lands

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

Attached to and made a part of letter to Gov. Steve Cowper, September 9, 1988

MINERAL CHARACTER TEST

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

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

1. Contains an actual exposure of valuable minerals marketable at a profit at the date of state selection; or

2. is contiguous to a claim with an actual exposure of valuable minerals marketable at a profit at the date of state selection, or,

3. if a placer deposit, is within one mile from a placer deposit that has existing reserves that were producing or were capable of producing valuable minerals at a profit at the date of state selection, or

4. if a lode deposit, is on and within one mile of a known lode deposit that has produced or is capable of producing valuable minerals at a profit at the date of state selection.

C. If a claim fails to meet the tests of subsection B, then the claim is conclusively presumed not to be of mineral character.

Rural Alaska Community Action Program, Inc.

9: Dom JRB CW F

August 16, 1988

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

Dear Governor Cowper:

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

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

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

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

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

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

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

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

Thank you for your attention to this matter.

Sincerely,

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

Mitch Demientieff, President
Tanana Chiefs Conference, Inc.

Don Chimegalrea
Nunam Kitlutsisti

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

Patti J. Saunders
Trustees for Alaska

Rex Blazer
Northern Alaska Environmental Center

Stephanie Kessler, Executive Director
Alaska Center for the Environment

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

Overview of Mining Activity on State Land

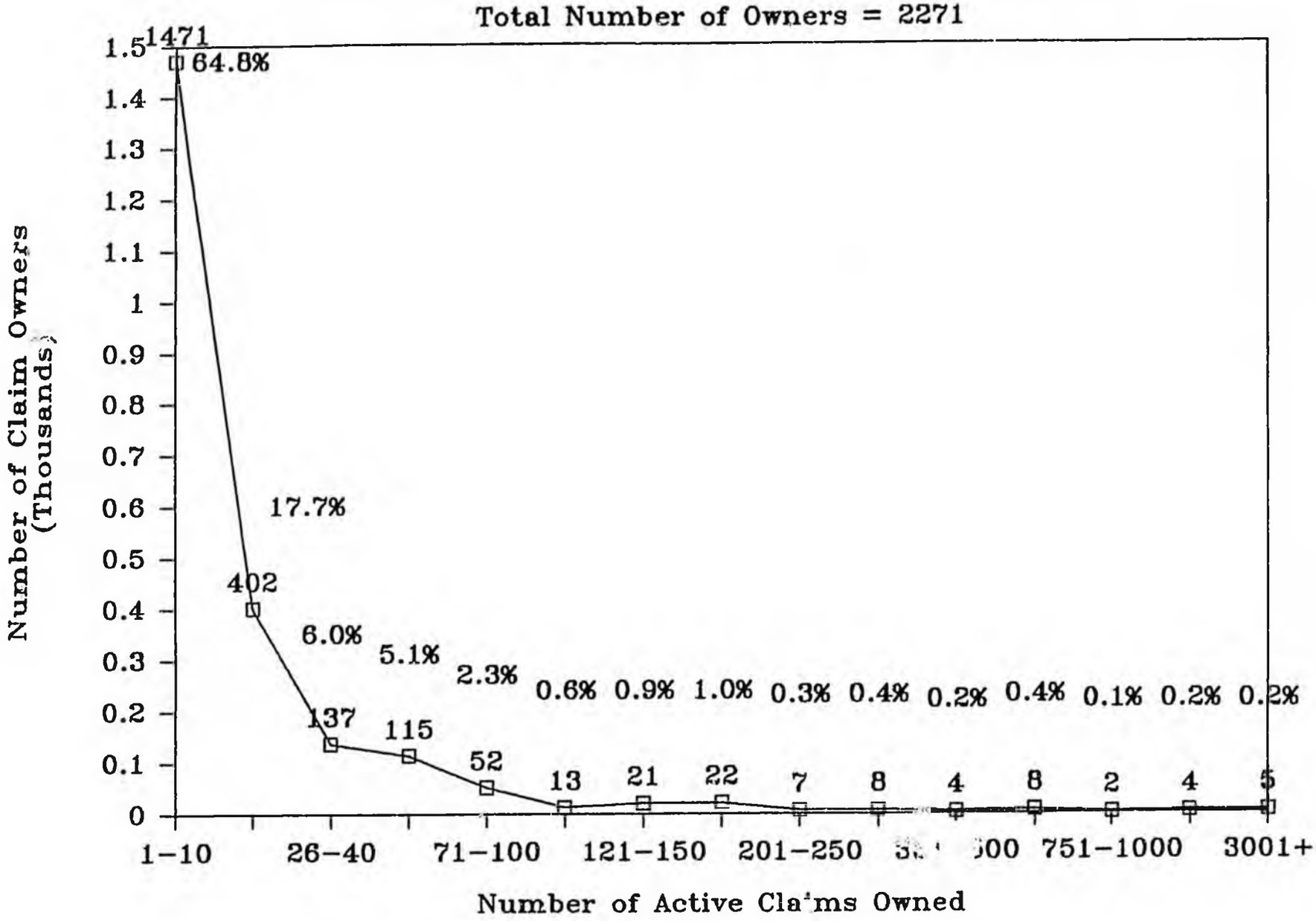
* 44,273 mining claims active on January 1, 1989

* 2,271 owners of these claims

* 202 permits issued to operate on state land in 1988

* gold production estimated to be less than 50,000 ounces from state land in 1988. (FYI - Statewide production of gold in 1988 estimated to be 240,000 ounces.)

OWNERS OF ACTIVE CLAIMS



OWNERS OF ACTIVE MINING CLAIMS
As of 12/31/88, Ranked by Total Number of Claims Held

Total Claims	Owner Name	L.A.S. C.I.D.
1	ACKMANN, LARRY E	171906
1	ADAMS, DIANA	9688
1	AFFLECK, MIKE	170542
1	ALBLINGER, BRETT	9296
1	ALBLINGER, STEPHEN	9295
1	ALDRICH, JIM	171492
1	ALMQUIST, KENT E	128522
1	ANNASARA ENTERPRISES	173571
1	ARCTIC MISSIONS INC	124782
1	ARTERBURN, WILLIAM N	4062
1	ASHBROOK, DANIEL E	116033
1	ATHERLY, NORMAN	10255
1	AU MINING INC	170481
1	AUSTIN, JEFF	172706
1	B-S MINING	157372
1	BABB, DONALD QUENTIN	8996
1	BAILEY, JAMES K	180593
1	BAKER, KAYE CORY	173267
1	BAKER, RAY S	157435
1	BARNARD, EARL R	129333
1	BARRY, MARY JANE	173978
1	BARSTOW, WILLIAM L.	11577
1	BASS, CHARLES	169404
1	BATCHOLDER, MIKE	9360
1	BATTY, BEN	10256
1	BAUGHMAN, SHIRLEE A	174051
1	BEACH RIVER CORP	124906
1	BELARDE, C S	171885
1	BELENSKI, ALMA JEAN	173837
1	BELENSKI, HARVEY F	173836
1	BELL, CHET	9299
1	BELL, WILLIAM E	165120
1	BENERTH, AL L	162976
1	BENERTH, SHERAN L	162977
1	BERRY JR, TED L	157211
1	BLACK, HARVEY D	10428
1	BLACKWELL, GREGORY B	171166
1	BLADE, FREEMAN	5221
1	BLOOM, DEBORAH J	9349
1	BLOOM, RONALD E	9348
1	BOLES, BARBARA A	170917
1	BONHAM, STEVE A	170020
1	BOSCHE, BERNARD B	172049
1	BOTTASCH, DON	180738
1	BOWNE, ARDEN R	107310
1	BRADLEY, MARTI	180191
1	BRATTEN, DUANE	9957
1	BROCK, JACK M	107425
1	BRONSON, ROSE	171702
1	BROWN, BONNIE WARD	157437
1	BROWN, DARLENE E	130885
1	BRUHN, OPAL JUNE	180545
1	BRUNER, CHUCK	173750
1	BUCK, DARRIN	167948
1	BUCKLES, HOMER	4177
1	BURR, FRANK	9257
1	BURR, NONA J	9256
1	BUZBY, RICHARD J	165152
1	BUZBY, SAUNDRA L	165153
1	CAMPBELL, DAVE	104890
1	CANNADY, MARTHA	7605
1	CARLSON, LYLE R	131704
1	CARLSON, ROBERT DENNIS	131687
1	CHAMBLISS, MICHAEL DUANE	8756
1	CHARTRAND, G. M.	184736
1	CHENEY, JANET L	10769
1	CHILDRESS, RICHARD L.	11672
1	CHRISTENSEN, CHARLENE	9581
1	CHRISTENSEN, CLINTON	9582
1	CHRISTENSEN, K C	9580
1	CHRISTIE, KNOX N	166742

Total Claims	Owner Name	L.A.S. C.I.D.
1	CHRISTIE, LORENA N	166743
1	CHRISTOPHERSON, M E	9902
1	CITY & BOROUGH OF JUNEAU	9956
1	CLIFT, SUSAN E	157371
1	CONKLIN, DAVID A	9617
1	CONKLIN, DONNA J	9618
1	COOK, JOHN PATRICK	182072
1	COX JR, JOSEPH L	173529
1	CRAMPTON, DONALD L	179875
1	CULLETT, DUANE A	10909
1	CUMER, ALEX	6335
1	DAFOE, NEAL	174041
1	DANGERFIELD, JOEL	9848
1	DART, CHARLES W	169954
1	DAVIS, BILLY MAC	10470
1	DAVIS, ROSS C	173636
1	DECKER, ROY A.	11542
1	DEFORE, ROBERT	9583
1	DEL, DENNIS A	8963
1	DEVORE, BRUCE HALE	155800
1	DICKERSON, JOHN L.	9925
1	DISSHON, DENNIS J.	10471
1	DRAVELING, LARRY J	134111
1	DURFEE, ROBERT BARDETT	172802
1	EAVES, WILLIAM L	170842
1	EDDY, R SCOTT	166730
1	EDDY, TIM A	10700
1	EDDY, TYLER A	10699
1	ELLIS, JENNIE L	165214
1	ELLS, CLIFFORD D	134612
1	ENSIGN, FRED	9362
1	ENSTICE, EUGENE W	171866
1	ERICKSON, DONALD	9586
1	EVANS, GAIL M	172601
1	EVANS, GEORGE S	172156
1	EVANS, KRISKA	10000
1	EVANS, PHILLIP L	172600
1	EVENSON, JEFFREY EARL	164195
1	EWING, JAMES D	171254
1	EWING, LINDA L	171256
1	FAIR, JAMES REX	7958
1	FARMER F, LARE FAYE	184398
1	FARNHAM, GARRY RAY	12027
1	FERGUSON, RAY W	107574
1	FERIANI, RALPH B	172263
1	FITZGERALD, KAREN	171218
1	FITZGERALD, MARY	171217
1	FITZWATER, LARRY L	9676
1	FORD, JAMES PATRICK	163357
1	FORSGREN, AUDRA K	172609
1	FORSGREN, RICHARD E	172608
1	FOSTER, CONNIE R.	11317
1	FRANKLIN, PATRICIA E SATHER	148147
1	FREEMAN, BILL	5252
1	FREY SR, JIM	180012
1	FRIZZELL, MICHAEL L	173168
1	FULLER, JACK L	172458
1	FYTEN, WARREN J	135743
1	GABER, DANIEL J	172664
1	GABER, STEVEN A	172663
1	GAPEN, JOHN	171576
1	GAY, ROGER H	179049
1	GLACIER VIEW MINING & DEV CORP	125817
1	GLANVILLE, DESSIE A	180071
1	GLENN, DAVID L	155485
1	GOINS, DAVID	4221
1	GOLSON, ROBERT E	9879
1	GOODMAN, FRED	11645
1	GOODMAN, LEE	172893
1	GOODMAN, MAE	11644
1	GREENE, MARK	11959
1	GREER, JAMES C	11677
1	GREGORY, MARK	11544