

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990

8672

6494

SENATE RESOURCES

898

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to state mineral policy
 Sponsor: Senator Coghill
 Requestor: Senator Coghill

Agency Affected: DEC
 BRU: Environmental Quality
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Amy D. Kyle Phone: 465-2600
 Division: Commissioner's Office Date: 4/27/89

Approved by Commissioner: AD Kyle Date: 4/27/89
 Agency: Department of Environmental Conservation

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

Changes in CSSB 178 (Fin) have no fiscal impact. This fiscal note is appropriate. 1/17/90
 Projections of no fiscal impact would continue through 1996.

(b)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CS SB 178 (FIN)
PUBLISH DATE: 1/17/90

FISCAL NOTE

REQUEST: _____

REVISION DATE: 4-25-89
TITLE: An Act relating to the state mineral policy

AGENCY: Natural Resources
BRU: Mining Management

SPONSOR: Coghill
REQUESTOR: Senate Resources Committee

COMPONENTS: Mining Management

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
PERS. SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND/BUILD.						
GRANTS/CLAIMS						
MISCELLANEOUS						
TOTAL		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (THOUSANDS OF DOLLARS)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS:

PREPARED BY: Larry Ostrovsky, Commissioner's Office

LO 4/25/89

DATE: 4-25-89
PHONE NO.: 465-2400

Changes in CSSB 178 (Fin) have no fiscal impact. This fiscal note is appropriate. 1/17/90 JL

Projections of no fiscal impact would

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Reporting requirements for
state mineral policy
Sponsor Coghill, Frank
Request to: Senate Resources

Agency Affected: Commerce & Economic Dev.
BRU: Business Development and
Alaska Railroad Corporation
Components: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Passage of this legislation is not expected to result in increased costs for either the department itself or the Alaska Railroad Corporation, administratively located within DCED.

Prepared by: Guy Bell, Director
Division: Administrative Services

Phone: 465-2505
Date: 4-21-89

Approved by Commissioner: Larry Mercurieff
Agency: Department of Commerce & Economic Development

Phone: 465-2500
Date: 4-21-89

Distribution (by preparer):

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

Changes in CSSB 178 (Fin) have no fiscal impact. This fiscal note is appropriate. 1/17/90 kb
Projections of no fiscal impact would continue through 1996.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Fish and Game
 Title: An Act relating to the mineral BRU: Habitat
policy of the state.
 Sponsor: Coghill and Frank Components: _____
 Requestor: Coghill

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Bruce H. Baber Phone: 465-4105
 Division: Habitat Date: 4/24/89

Approved by Commissioner Doni Callenworth Date: 4.24.89
 Agency: Fish and Game

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

Changes in CSSB 178 (Fin) have no fiscal impact. This fiscal note is appropriate. 1/17/90
 Projections of no fiscal impact would continue through 1996.

FISCAL NOTE

(e)

REQUEST:

Revision Date: _____
Title: "An Act relating to the review and reporting requirement of agencies...."
Sponsor: Cochill and Frank
Requestor: Senate Resources Committee

Agency Affected: Office of the Governor
BRU: Office of Management and Budget
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Michael A. Nizich, Director *Man* Phone: 465-3616
Division: Division of Administrative Services Date: 4/24/89

Approved by Commissioner: Garrev M. Peska Date: 4/24/89
Agency: Chief of Staff

Distribution (by preparer) :

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

Changes in CSSB 178 (Fin) have no fiscal impact. This fiscal note is appropriate. 1/17/90
Projections of no fiscal impact would continue through 1996.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to the review and reporting requirements/mineral policy
Sponsor: Coghill and Frank
Requestor: Resources Committee

Agency Affected: Revenue
BRU: Income & Excise Audit
Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel *Steven E. Kettel* Phone: (907) 465-2320
Division: Income and Excise Audit Date: April 21, 1989

Approved by Commissioner: Hugh Malone *Hugh Malone* Date: April 21, 1989
Agency: Department of Revenue

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

Changes in CSSB 178 (Fin) have no fiscal impact. This fiscal note is appropriate. 1/17/90 SKL
Projections of no fiscal impact would continue through 1996. page 1 of 2

Prepared by:
Steven E. Kettel
Department of Revenue
Income and Excise Audit Division
April 21, 1989

CS SB 178
Bill Analysis

This proposal will require the Department of Revenue to review its statutes and regulations concerning mining license tax (AS 43.65), and annually file a report with the Commissioner of Natural Resources recommending resolution of any deficiencies which might hinder mineral exploration and development in the state as provided for in the state's Mineral Policy (AS 44.99.110).

No fiscal costs are estimated in the preparation of this report.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB178(FIN)
PUBLISH DATE: 1/17/90

FISCAL NOTE

REQUEST: Senate Resources

REVISION DATE: 4/21/89
TITLE: State Mineral Policy

AGENCY: University of Alaska
BRU: _____

SPONSOR: Coghill/Frank
REQUESTOR: Senate Resources

COMPONENTS: _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
PERS. SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND/BUILD.						
GRANTS/CLAIMS						
MISCELLANEOUS						
TOTAL		0				
CAPITAL		0				
REVENUE		0				

FUNDING: (THOUSANDS OF DOLLARS)

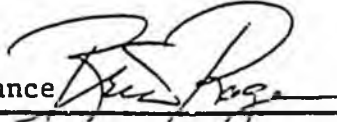
GENERAL FUNDS		0				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		0				
PART-TIME						
TEMPORARY						

ANALYSIS:

The review and recommendations can be accomplished within existing budget levels.

PREPARED BY: Brian Rogers, Vice President for Finance 

DATE: 4/21/89
PHONE NO.: 474-7448

Changes in CSSB 178 (Fin) have no fiscal impact. This fiscal note is appropriate. 1/17/90

Projections of no fiscal impact would continue through 1996.

ORIGINAL VERSION
OF SB178

1 IN THE SENATE

BY COGHILL AND FRANKS

2

SENATE BILL NO. 178

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the review and reporting require-
7 ments of agencies of the state relating to the state
8 mineral policy."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 *The following dip* Section 1. AS 44.99.110 is amended by adding new subsections to read:

11 *(b)* Each agency of the state shall review its statutory author-
12 ity, its administrative regulations, and its procedures applicable to
13 mineral exploration and development to determine whether there are
14 deficiencies or inconsistencies that must be addressed in order to
15 comply with the policy established in (a) of this section.

16 (c) Each agency of the state shall forward its comments and
17 recommendations on the resolution of the deficiencies and inconsis-
18 tencies in its statutory authority, its administrative regulations,
19 and its procedures applicable to mineral exploration and development
20 to the commissioner of natural resources on October 1 of each year.
21 Each agency of the state shall also report on the progress that it has
22 made on the resolution of the deficiencies and inconsistencies that
23 were identified in earlier reports. The commissioner shall assemble
24 the comments, recommendations, and reports and forward them, unedited,
25 to the governor and the legislature within the first 10 days of each
26 regular session of the legislature.

27 (d) Each agency of the state shall work with mining interests,
28 coastal resource service areas, the public, and other resource users
29 to propose solutions to inconsistencies and deficiencies identified.



Alaska State Legislature

Please enter into the record my testimony to the Senate Resources
 committee name
 committee on S.B. 178, dated 4/17/89
 bill/subject

On behalf of the Alaska Minerals Commission
 I recommend favorable action on S.B. 178 as stated on
 Page 3, January 1989 AK Min Com. Report - Item: Amending
 the Reporting Requirements of the Mineral Policy Act -
 to wit " Sec 4.99.110(2) should be amended to require
 each department, board, Commission or agency, including the
 University of Alaska, to fulfill its reporting requirements
 as set out in this section on an annual basis through 1994
 rather than once only in 1989."

If a reduction in number of departments, boards,
 commissions or agencies is necessary the following should
 remain in the Bill 178: DNR, Fish and Game, DEC,
 Commerce, Government Coordination, Revenue and
 University of Alaska

Signed: Earl H. Beutlich
 Testifier
Alaska Minerals Commission
 Representing (Optional)
P.O. Box # 80148 Fairbanks, Alaska 99708
 Address
(907) 479-6240
 Phone No.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
PO BOX 0, JUNEAU, ALASKA 99811-1800

(907) 465-2600

POSITION PAPER ON SB 178

TITLE: An Act relating to the state mineral policy

EFFECT OF THE BILL:

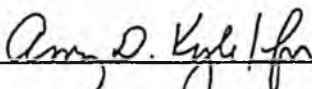
The bill would require each state agency to review its statutory authority, regulations and other requirements that apply to the mining industry to determine if they comply with the Mineral Policy Act.

DEPARTMENT POSITION:

The Department believes that the analysis required in this proposed legislation has already been completed as provided in the Mineral Policy Act.

FISCAL EFFECT:

The bill would require staff work to prepare the annual analysis. Because the bulk of the work was done during the first review, this is not expected to have a significant cost.



Dennis D. Kelso, Commissioner

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

March 15, 1989

The Honorable Bettye Fahrenkamp, Chair
Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

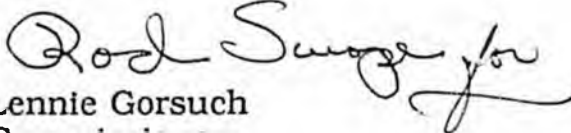
Subject: SB 178, An act relating to the state mineral policy.

Background: SB 178 would require each state agency to review its statutory authority, administrative regulations and procedures applicable to mineral exploration and development to analyze for deficiencies and inconsistencies relative to the state Mineral Policy Act. It would further require that the Commissioner of Natural Resources assemble the comments, recommendations and reports and forward them to the Governor and Legislature.

Position: The Mineral Policy Act required a similar, but one-time, exercise. We believe that it was valuable in that state agencies were put on notice of the Mineral Policy Act and affirmatively addressed their own authorities in light of it. However, this experience has shown that the vast majority of state agencies, boards and commissions have little relevance to mineral development. As expected, the resource agencies have the bulk of regulatory authority over mineral activity. From the perspective of the Department of Natural Resources, our divisions are in regular contact with representatives of the industry, and we are generally put on notice of regulations or authorities that may run counter to mineral development. Therefore, we feel that the proposed legislation is somewhat duplicative of current practices.

We look forward to continued work with the sponsor and committee on this legislation.

Sincerely,


Lennie Gorsuch
Commissioner

cc: Senator Coghill

Committee Members

Commissioner Collinsworth
Department of Fish and Game

Commissioner Kelso
Department of Environmental Conservation

Commissioner Hoffman
Department of Commerce and Economic Development

Denby Lloyd, Special Staff Assistant
Office of the Governor

Bob Evans, Legislative Liaison
Office of the Governor

Bob Forbes, Director
Division of Geological and Geophysical Surveys
Department of Natural Resources

Jerry Gallagher, Director
Division of Mining
Department of Natural Resources



Alaska State Legislature

SENATE

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

To: Senator Bettye Fahrenkamp
Senate Resource Committee Chairperson

From: Senator Jack Coghill

Re: SB 178; An Act Relating to the review and reporting requirements of agencies of the state relating to the state mineral policy.

Date: March 23, 1989

Intent: The purpose of this measure is to extend the review and reporting requirements of the Minerals Policy Act, for the life of the Alaska Minerals Commission.

Background: The Minerals Policy Act, which was signed into law in June of 1988, carried with it a Special Act section requiring state agencies to review their legal authorities and determine if they contained any inconsistencies with the Policy Act. All state agencies, under the Special Act provision, were to then report the findings of their review to the Legislature. This has been done for 1988.

The Alaska Minerals Commission has recommended that the review and reporting requirement be extended and that the University of Alaska be added.

Attachments:

1. List of State Statutes and Regulations affecting Mining.
(page 3 and 4 of this memorandum)
2. DNR Position Paper & (0) Fiscal Note, dated March 15, 1989.
3. DEC Position Paper & (0) Fiscal Note, dated March 21, 1989.
4. Alaska Minerals Commission Recommendations, 1989.
5. Select reports of the state agencies having mine related regulatory authorities; from Minerals Policy Act Compliance Form as required by AS 44.99.110., 1989.

March 23, 1989

Recommendations:

1. Out of at least 30 agency reports that were transmitted, only 7 appear to have mining related regulatory authorities. You may want to consider replacing the "Each agency" language with the laundry list of agencies who's reports I have supplied, with the addition of the U of A and the Department of Revenue and the Division of Governmental Coordination.
2. Schedule the bill as soon as possible and pass it out of committee with "do pass" recommendations.

LIST OF STATE STATUTES AND REGULATIONS
Effecting State Mining Activities

[This list compiled from the 1989 Minerals Policy Act reports]

I. Department of Commerce and Economic Development

- AS 44.33.020. (Duties of the Department)
- AS 44.33.431. (Alaska Minerals Commission)

II. Department of Environmental Conservation

- AS 46.03 (Environmental Conservation)
- AS 46.04 (Oil Pollution Control)
- AS 46.08 (Oil and Hazardous Substance Releases)
- AS 46.09 (Hazardous Substance Release Control)
- AS 46.35 (Environmental Procedures Coordination)

- 18 AAC 15 (Administrative Procedures)
- 18 AAC 30 (Environmental Sanitation)
- 18 AAC 31 (Food Service)
- 18 AAC 50 (Air Quality Control)
- 18 AAC 60 (Solid Waste Management)
- 18 AAC 62 (Hazardous Waste)
- 18 AAC 70 (Water Quality Standards)
- 18 AAC 71 (Placer Mining Demonstration Grants)
- 18 AAC 72 (Wastewater Disposal)
- 18 AAC 75 (Oil and Hazardous Substance Pollution Control)
- 18 AAC 80 (Drinking Water)
- 18 AAC 90 (Pesticide Control)
- 18 AAC 95 (Administrative Enforcement)

Written Procedures Applicable to Mining: PLACER MINING
(not including statutes & regulations) ENFORCEMENT
POLICY

III. Department of Fish and Game

- AS 16.05.020 (Functions of the Commissioner)
- AS 16.05.050 (Powers and Duties of the Commissioner)
- AS 16.05.840
through .860 (Fishways Required)
- AS 16.05.870
through .900 (Protection of Fish and Game)
- AS 16.20.050
through .060 (Development Authorizations)
- AS 16.20.520
through .530 (Development Authorizations)

IV. Department of Natural Resources

AS 27.21 (Surface Coal Mining Program)
AS 33.04.060
through .070 (Land Planning and Classification)
AS 38.05 (Alaska Lands Act)
AS 40.05 (Records)
AS 41.08.010
through .040 (Geological Survey)
AS 41.35 (Historic Preservation Act)
AS 46.15 (Water Use)
AS 46.17 (Dam safety)

Chapter 48, SLA 1987 (Mental Health Lands)

Alaska National Interest Lands Conservation Act
Public Law 96-487, Section 906(k).
(State Concurrence of federal administrative
actions on lands selected by the State as part
of statehood entitlement)

11 AAC 55 (Land Planning and Classification)
11 AAC 58 (Leasing of Lands)
11 AAC 82 (Mineral Leasing Procedures)
11 AAC 84 (Other Leasable Minerals)
11 AAC 85 (Coal)
11 AAC 86 (Mining Rights)
11 AAC 90 (Surface Coal Mining)
11 AAC 93 (Water Management)

Written Procedures Applicable to Mining: CHAPTER TWO from
(not including statutes & regulations) Land Use Plans

V. Department of Transportation and Public Facilities

AS 19 (Highways and Ferries)

17 AAC 10 (Engineering: Encroachments, Driveways, and
Road Approaches)
17 AAC 15 (Utility and Railroad Permits)
17 AAC 25 (Operations, Wheeled Vehicles)
17 AAC 35 (Toll Highways)

VI. Office of the Ombudsman

AS 24.55 Authority to review state administrative
actions, both legality and fairness.

VII. Alaska Public Utilities Commission

AS 42.06 (indirect) APUC regulates intrastate pipelines.
This indirectly affects mineral
exploration and development.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1798
PHONE: (907) 465-2400

March 15, 1989

The Honorable Bettye Fahrenkamp, Chair
Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

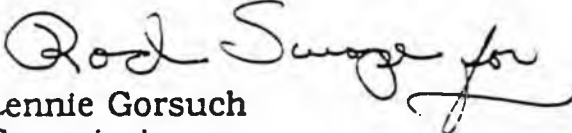
Subject: SB 178, An act relating to the state mineral policy.

Background: SB 178 would require each state agency to review its statutory authority, administrative regulations and procedures applicable to mineral exploration and development to analyze for deficiencies and inconsistencies relative to the state Mineral Policy Act. It would further require that the Commissioner of Natural Resources assemble the comments, recommendations and reports and forward them to the Governor and Legislature.

Position: The Mineral Policy Act required a similar, but one-time, exercise. We believe that it was valuable in that state agencies were put on notice of the Mineral Policy Act and affirmatively addressed their own authorities in light of it. However, this experience has shown that the vast majority of state agencies, boards and commissions have little relevance to mineral development. As expected, the resource agencies have the bulk of regulatory authority over mineral activity. From the perspective of the Department of Natural Resources, our divisions are in regular contact with representatives of the industry, and we are generally put on notice of regulations or authorities that may run counter to mineral development. Therefore, we feel that the proposed legislation is somewhat duplicative of current practices.

We look forward to continued work with the sponsor and committee on this legislation.

Sincerely,


Lennie Gorsuch
Commissioner

cc: Senator Coghill

Committee Members

Commissioner Collinsworth
Department of Fish and Game

Commissioner Kelso
Department of Environmental Conservation

Commissioner Hoffman
Department of Commerce and Economic Development

Denby Lloyd, Special Staff Assistant
Office of the Governor

Bob Evans, Legislative Liaison
Office of the Governor

Bob Forbes, Director
Division of Geological and Geophysical Surveys
Department of Natural Resources

Jerry Gallagher, Director
Division of Mining
Department of Natural Resources

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
PO BOX 0, JUNEAU, ALASKA 99811-1800

(907) 465-2600

POSITION PAPER ON SB 178

TITLE: An Act relating to the state mineral policy

EFFECT OF THE BILL:

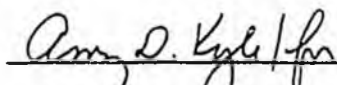
The bill would require each state agency to review its statutory authority, regulations and other requirements that apply to the mining industry to determine if they comply with the Mineral Policy Act.

DEPARTMENT POSITION:

The Department believes that the analysis required in this proposed legislation has already been completed as provided in the Mineral Policy Act.

FISCAL EFFECT:

The bill would require staff work to prepare the annual analysis. Because the bulk of the work was done during the first review, this is not expected to have a significant cost.



Dennis D. Kelso, Commissioner

C O R R E C T I O N

Discard 5. B. 178
and retain this corrected version.

1 IN THE SENATE

BY COGHILL AND FRANK

2

SENATE BILL NO. 178

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the review and reporting require-
7 ments of agencies of the state relating to the state
8 mineral policy."

9

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10

* Section 1. AS 44.99.110 is amended by adding new subsections to read:

11

(b) Each agency [of the state] shall review its statutory author-
12 ity, its administrative regulations, and its procedures applicable to
13 mineral exploration and development to determine whether there are
14 deficiencies or inconsistencies that must be addressed in order to
15 comply with the policy established in (a) of this section.

16

(c) Each agency [of the state] shall forward its comments and
17 recommendations on [the resolution of the deficiencies and inconsis-
18 tencies in its statutory authority, its administrative regulations,
19 and its procedures applicable to mineral exploration and development
20 to the commissioner of natural resources on October 1 of each year.
21 Each agency of the state shall also report on the progress that it has
22 made on the resolution of the deficiencies and inconsistencies that
23 were identified in earlier reports. The commissioner shall assemble
24 the comments, recommendations, and reports and forward them, unedited,
25 to the governor and the legislature within the first 10 days of each
26 regular session of the legislature.

27

(d) Each agency of the state shall work with mining interests,
28 coastal resource service areas, the public, and other resource users
29 to propose solutions to inconsistencies and deficiencies identified.

1 (e) In (b) - (d) of this section, "agency of the state" includes
2 each department, board, commission, or other agency or public
3 corporation of the state, including the University of Alaska and the
4 Alaska Railroad Corporation.

5 * Sec. 2. AS 44.99.110(b), 44.99.110(c), 44.99.110(d), and 44.99.110(e)
6 are repealed July 1, 1994.

**STATE OF ALASKA
1989 LEGISLATIVE SESSION**

BILL VERSION: SB 178

PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 10-Mar-89
 Title: An Act relating to the state mineral policy.
 Sponsor: Coghill
 Requestor: Senator Coghill

Agency Affected: Natural Resources
 BRU: Mining Management
 Components: Mining Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		2.5	2.5	2.5	2.5	2.5
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	2.5	2.5	2.5	2.5	2.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		2.5	2.5	2.5	2.5	2.5
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	2.5	2.5	2.5	2.5	2.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky
 Division: Commissioner's Office
 Approved by Commissioner: Lennie Gorsuch
 Agency: Department of Natural Resources

Phone: 465-2400
 Date: 10-Mar-89
 Date: 10-Mar-89

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

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An act relating to state mineral policy
 Sponsor: Senator Coghill
 Requestor: Senator Coghill
 Agency Affected: DEC
 BRU: Environmental Quality
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: _____ Phone: 465-2600
 Division: Commissioner's Office Date: 3/20/89
 Approved by Commissioner: A.D. Kelly Date: 3/21/89
 Agency: DEC

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

FISCAL NOTE

REQUEST:

Revision Date: 10-Mar-89 Agency Affected: Natural Resources
 Title: An Act relating to the state BRU: Mining Management
mineral policy.
 Sponsor: Coghill Components: Mining Management
 Requestor: Senator Coghill

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		2.5	2.5	2.5	2.5	2.5
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	2.5	2.5	2.5	2.5	2.5

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		2.5	2.5	2.5	2.5	2.5
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	2.5	2.5	2.5	2.5	2.5

POSITIONS:

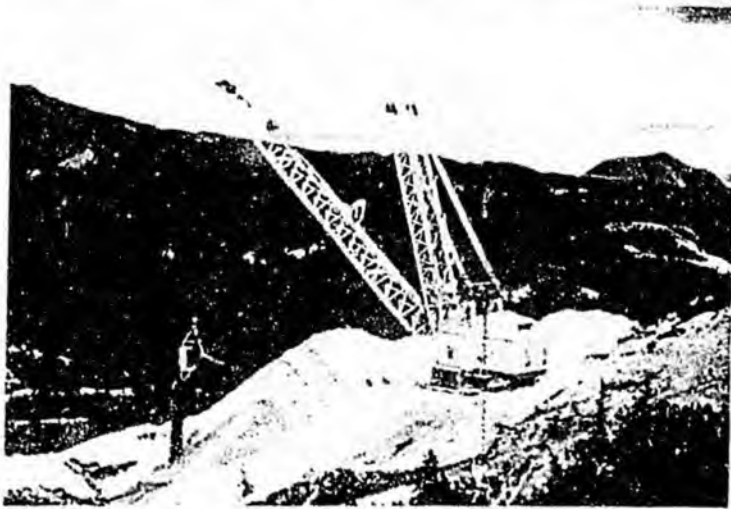
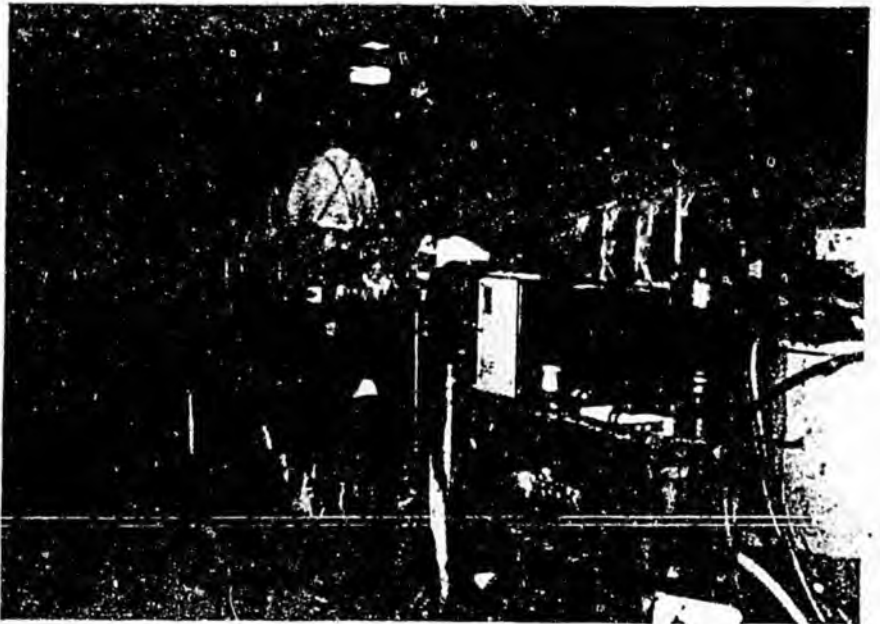
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky Phone: 465-2400
 Division: Commissioner's Office Date: 10-Mar-89
 Approved by Commissioner: Lennie Gorsuch Date: 10-Mar-89
 Agency: Department of Natural Resources

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

Report of the
Alaska Minerals Commission



January 1989



RECOMMENDATIONS OF THE ALASKA MINERALS COMMISSION

I. LEGISLATIVE PRIORITIES

Implementation of the 6(i) Court Decision

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

The Commission supports the positions of both the Alaska Miners Association¹ and Governor Steve Cowper² on the following three critical aspects of any legislation to be enacted.

1. The traditional discovery, location and recordation system recognizes the unique nature of mineral resource development as well as the needs of individuals and companies carrying out mineral exploration and development. The right of self-initiation is guaranteed by the Alaska Constitution and no fundamental changes should be made in the way preferential minerals rights are initiated on state land.
2. Because of the long lead time commonly required between the discovery of a deposit and its initial production, there should be no arbitrary time limits placed upon the tenure of a mining claimant on state lands. This is especially important in Alaska where the need to construct basic infrastructure and to await financial and market "windows" will often result in longer development lead times than in more developed states and countries.
3. The setting of rental and/or royalty fees for mining claims on subject state lands should neither penalize claimants nor create disincentives for individuals or companies doing mineral exploration. In Alaska, exploration, development, capital and operating costs are commonly higher than in more developed states and countries. Alaska's cumulative mineral tax schedule, including existing corporate income taxes, mining license taxes and new rental and/or royalty fees should not unduly burden the small miner nor increase total development costs to the point where diminished economic feasibility precludes mine development or mineral exploration on subject state lands.

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

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

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

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

Allowance for Flexible Work Weeks

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

Extension of Underground Work Hours

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

Multiple Use of State Lands

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

1. Alaska Statute 38.05.300 should be amended as follows:

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

2. The Legislature should redefine, to conform with constitutional intent, the various definitions of "multiple use" in the Alaska Statutes to require the management of state lands for the use of all resources rather than allocating or selectively denying resource use.
3. The Legislature should only make closures of land to mineral entry where documented and demonstrated incompatible use is proven and only when preceded by a mineral assessment.
4. The Legislature and Governor should periodically review lands closed to mineral entry to assess the need for continued closure and, if there is no longer a compelling need for closure, return the land to multiple-use designation.

Amending the Reporting Requirements of the Minerals Policy Act.

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

Industrial Minerals Inventory

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

Minerals Policy Act Compliance Form
as required by AS 44.99.110

Department/Board/Commission Name: Department of Commerce and Economic Dev.
Mailing Address: P.O. Box D
Juneau, AK 99811
Agency Contact: Tom Lawson, Acting Director, Business Dev.
Telephone: 465-2017

Please complete the following information requests:

1. Does your agency have statutory authority, regulations or procedures applicable to mineral exploration and development?
XXX Yes _____ No If no, then additional information is not required. Return form to DNR in the pre-addressed envelope provided.
2. Please list those statutes and regulations which are applicable to mineral exploration and development:
AS 44.33.020 _____
AS 44.33.431 _____

3. Does your agency have written procedures (not including statutes and regulations) applicable to mineral exploration and development?
_____ Yes XXX No
4. Do your agencies' statutes, regulations and procedures comply with Section 1 of the Minerals Policy Act?
XXX Yes _____ No If no, please list those statutes, regulations or procedures that do not comply:

Please return this completed form to the Department of Natural Resources in the pre-addressed envelope provided. Thank you.

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

Report to the Legislature and Governor on the Statutory Authority, Administrative Regulations and Procedures of the Department of Commerce and Economic Development Applicable to the Alaska Mineral Policy Act (AS. 44. 99. 110)

The following narrative describes the statutory duties of the Department of Commerce and Economic Development that are directly, or indirectly, applicable to mineral exploration and development.

AS 44. 33. 020

Under statutory functions of the Department of Commerce and Economic Development concerning the regulation of commerce, several duties indirectly apply to mineral exploration and development and would include such duties as registering and regulating corporations, including mining corporations, and certifying and registering professionals, including geologists and mining engineers.

Under statutory duties concerning economic development, the following subsections of AS 44. 33. 020 provide the authority and direction for the performance of several of the mineral development functions and activities that are presently being performed by the Division of Business Development.

The Department of Commerce and Economic Development shall

(12) conduct studies, enter into contracts and agreements, and make surveys relating to the economic development of the state and, when appropriate, assemble, analyze, and disseminate the findings;

(13) provide factual information and technical assistance for potential industrial and commercial investors; and activate a program for promoting balanced economic growth in the state;

(15) establish and activate programs to achieve balanced economic development in the state and advise the governor on economic development policy matters;

(16) formulate a continuing program for basic economic development and for the necessary promotion, planning and research that will advance the economic

development of the state;

(17) cooperate with private, governmental and other public institutions and agencies to advise the Governor on economic development policy matters;

The Division has instituted the following policies and programs to carry out these duties.

A) Respond in timely fashion to all reasonable requests from the public and private sectors for economic information on Alaska's mng zx and international mnl markets.

B) In cooperation with the Department of Natural Resources, annually compile, write, publish and distribute the Alaska's Mineral Industry report summarizing salient economic statistics and describing the activities of Alaska's mineral industry and publish a summary of the report to be available to the legislature, administration and the public in the first 30 days of each legislative session.

C) Enhance Alaska's visibility with major domestic and international mining companies and mineral resource investors to attract their participation in Alaska mineral exploration and development projects by:

1) providing support for state officials participating in industry forums or trade delegations;

2) participate in trade shows at selected mining conventions;

3) author articles for business and professional mining journals;

4) make special distributions of the annual "Alaska's Mineral Industry" reports to domestic and foreign mining companies and to selected newspapers and trade publications;

5) provide information and assistance to potential industrial and commercial investors by responding to all reasonable private sector requests for technical or business information or for assistance in identifying and contacting potential business partners.

D) Participate with other state agencies in the development of state policy positions, of administrative actions, and of legislative recommendations for issues that will have significant economic impacts.

E) Provide expertise to other government agencies and to the legislature on mining issues of economic importance to the state by responding to all reasonable requests.

AS 44.33.431

The Alaska Minerals Commission was established in the Department of Commerce and Economic Development by sec. 1, ch. 98, SLA 1986 as a temporary law but was codified in 1988 as Sec. 44.33.431 after the repeal of the act was postponed from 1989 to 1994. The commission is directed to make recommendations to the governor and the legislature annually in a report to be presented during the first ten days of the legislative session. The Department of Commerce and Economic Development provides budgeting, clerical and administrative services for the Alaska Minerals Commission.

Summary

The Department of Commerce and Economic Development believes that the statutes which set out the duties of the department and the regulations and procedures that guide the department's performance of these duties are neither deficient nor inconsistent with Section 1. of AS44.99.110.

Minerals Policy Act Compliance Form
as required by AS 44.99.110

Department/Board/Commission Name: Department of Environmental Conservation
Mailing Address: P.O. Box 0
Juneau, Alaska 99811-1800
Agency Contact: Larry Dietrick
Telephone: 465-2640

Please complete the following information requests:

1. Does your agency have statutory authority, regulations or procedures applicable to mineral exploration and development?

Yes No If no, then additional information is not required. Return form to DNR in the pre-addressed envelope provided.

2. Please list those statutes and regulations which are applicable to mineral exploration and development: *continued on back.

AS 46.03 (Env. Cons.) AS 46.09 (Hz Subst Rel.Cont) 18 AAC 30 (Env. San.)
AS 46.04 (Oil Poll. Cont) AS 46.35 (Env. Proc. Coord) 18 AAC 31 (Food Service)
AS 46.08 (Oil & Hz Subst) 18 AAC 15 (Adm. Proc.) 18 AAC 50 (Air Qual. Cont)

3. Does your agency have written procedures (not including statutes and regulations) applicable to mineral exploration and development?

Yes No Placer Mining Enforcement Policy

4. Do your agencies statutes, regulations and procedures comply with Section 1 of the Minerals Policy Act?

Yes No If no, please list those statutes, regulations or procedures that do not comply:

Please return this completed form to the Department of Natural Resources in the pre-addressed envelope provided. Thank you.

MEMORANDUM

State of Alaska

Don

DEPARTMENT OF FISH AND GAME

TO: Judith M. Brady
Commissioner
Department of Natural
Resources

DATE: October 25, 1988

FILE NO.:

TELEPHONE NO.: 465-4100

SUBJECT: Minerals Policy Act
Compliance Form

FROM: Don W. Collinsworth *DWC*
Commissioner
Department of Fish and Game

Enclosed is a completed Minerals Policy Act Compliance Form for the Alaska Department of Fish and Game (ADF&G). The ADF&G authorities that apply to mineral exploration and development are found in Chapters 5 and 20 of Title 16, Fish and Game. As you probably know, Chapter 5 consists of sections that authorize the department to deny, condition, or approve fish habitat permits for projects that will be conducted in or adjacent to fish-bearing waters and that may have an adverse effect on fisheries resources or public use of them. Chapter 20 gives the authority to create and manage legislatively designated state game refuges, sanctuaries, and critical habitat areas for multiple uses including activities associated with mineral exploration or development if the uses or activities are compatible with the purpose for which the special area was created.

We believe that our statutes and procedures comply in full with Section 1 of the Minerals Policy Act, especially subsections (1), (2), and (4). Thank you for requesting our comments. If you have any questions, please do not hesitate to call me at 465-4100 or Habitat Division Director Frank Rue at 465-4105.

Enclosure

cc w/form: Frank Rue

DEPARTMENT OF
NATURAL RESOURCES

OCT 25 1988

COMMISSIONER'S OFFICE
JUNEAU

Minerals Policy Act Compliance Form
as required by AS 44.99.110

Department/Board/Commission Name: Department of Natural Resources
Mailing Address: 400 Willoughby Avenue
Juneau, Alaska 99801
Agency Contact: Gerald Gallagher
Telephone: 762-2165

Please complete the following information requests:

1. Does your agency have statutory authority, regulations or procedures applicable to mineral exploration and development?
 Yes No If no, then additional information is not required. Return form to DNR in the pre-addressed envelope provided.
2. Please list those statutes and regulations which are applicable to mineral exploration and development:
See attached sheet

3. Does your agency have written procedures (not including statutes and regulations) applicable to mineral exploration and development?
 Yes No
4. Do your agencies statutes, regulations and procedures comply with Section 1 of the Minerals Policy Act?
 Yes No If no, please list those statutes, regulations or procedures that do not comply:

Please return this completed form to the Department of Natural Resources in the pre-addressed envelope provided. Thank you.

Alaska Department of Natural Resources
Mineral Policy Act Compliance

Applicable Statutes:

AS 27.21 (Surface Coal Mining Program)
AS 38.04.060 - .070 (Planning and Classification)
AS 38.05 (Alaska Lands Act)
AS 40.05 (Records)
AS 41.08.010 - .040 (Geological Survey)
AS 41.35 (Historic Preservation Act)
AS 46.15 (Water Use)
AS 46.17 (Dam Safety)
Chapter 48, SLA 1987 (Mental Health Lands)
ANILCA 906 (k) (Concurrence on Federal Authorization)

Applicable Regulations:

11 AAC 55 (Land Use Planning)
11 AAC 58 (Rights of Way)
11 AAC 82 (Mineral Leasing)
11 AAC 84 (Other Minerals)
11 AAC 85 (Coal)
11 AAC 86 (Mining Rights)
11 AAC 90 (Surface Coal Mining Program)
11 AAC 93 (Water Management)

Applicable Procedures:

"Chapter Two" from land use plans (copy attached).

SUBSURFACE RESOURCES

Goals

Mineral and Energy Supplies. Make metallic and nonmetallic minerals, coal, oil and gas, and geothermal resources available to contribute to the energy and mineral supplies and independence of the United States and Alaska.

Economic Development. Contribute to Alaska's economy by making subsurface resources available for development, which will provide stable job opportunities and stimulate growth of secondary and other primary industries.

State Revenues. Establish a stable source of state revenues.

Environmental Quality and Cultural Values. When developing subsurface resources, protect the integrity of the environment and affected cultural resources to the extent feasible and prudent.

State Support for Mining. Aid in the development of infrastructure (such as ports, roads, or railroads) and continue to provide geologic mapping and technical support to the mining industry.

Mineral and Coal Development Guidelines

A. Mineral and Coal Exploration. State land in the Copper River Basin may be leased or opened for coal prospecting permits if the department determines it is in the best interest of the state as required by AS 38.05.035. Before a permit is issued, DNR will determine if the surface values are significant enough to warrant restricting surface entry. Decisions on surface entry for coal adjacent to streams will be made in consultation with the affected agencies.

B. Open to Mineral Entry. All state lands that are open to mineral entry are multiple use areas where mineral development will be accommodated and encouraged. Recognized exploration methods for locatable minerals will be allowed on all state lands unless specifically closed to mining and will be subject to the conditions of a land use permit. DNR may determine that some traditional forms of access will not be allowed in specific areas to avoid resource damage.

Where an area is open to mineral entry, a miner has the right to stake a claim regardless of the surface use designation or classification. Any adverse effects of mining on surface resources or uses will be managed through compliance with state laws and regulations and the management intent and guidelines of this plan.

C. Reclamation of Mined Land. Land use permits and plans of operation for mineral development will specify measures needed to return the land to a useful state. Determination of the specific measures to be taken and whether or not a performance bond will be required will be done in consultation with the affected agencies. Specific measures may include storage and reuse of topsoil; disposal of overburden; regrading of tailings and revegetation; reestablishment of natural (not necessarily original) contours; reestablishment of a natural drainage system; long-term erosion control measures; and removal of equipment, improvements, and other man-made items.

D. Access for Mineral and Coal Development. Existing roads and trails should be used to provide access to mine sites wherever feasible. Regulations for miscellaneous land use permits require that access will be managed so that damage is minimal. (See p. 2-38.)

E. Unauthorized Use of State Lands. DNR will place a high priority on taking appropriate action against construction of illegal structures, blocking public access, or other unauthorized use of public lands for private purposes. This will include taking appropriate action against mining claimants who use their claims for facilities that are unnecessary for prospecting, extraction or basic processing activities. In carrying out this policy, emphasis will be placed on unauthorized uses that obstruct significant settlement, public recreation, other public uses, or public access.

F. Control of Visual Impacts. Guidelines will be developed as necessary through the land use permit or leasing process to minimize the adverse visual impacts of mining especially in settled areas, recreation areas, and in areas viewed from roads. In such areas, guidelines should consider, at a minimum, the following items: control of solid wastes; removal of vegetation; siting of mining structures, tailings and overburden; roads; and rehabilitation of mining sites.

G. Approval of Plans of Operation. Using procedures established under existing leasing laws and regulations, DNR reviews plans of operation required for locatable mineral leases and will consult with and carefully consider recommendations of the Department of Fish and Game (ADF&G) and the Department of Environmental Conservation (DEC). DNR will approve plans of operation if they adequately address the guidelines of the area plan and applicable laws and regulations. Violation of the plan of operations is cause for revocation of the approved plan of operation or termination of the lease.

Guidelines for Land Sales in Areas with Mineral or Coal Potential

A. Land Sales in Areas with High Mineral Potential. Generally, settlement areas designated by this plan have avoided areas of high mineral potential and areas with mining locations in good standing.

B. Land Sales in Areas with High or Moderate Coal Potential. Generally, land sales will not occur in areas of existing coal leases or areas of high coal potential as defined in 11 AAC 85.010. Land sales should be avoided in areas of moderate coal potential as defined in 11 AAC 85.010 except where land sales are determined to be the highest and best use of the land.

Guidelines for the Application of Locatable Mineral Closures

Locatable mineral closures are the most extreme management tool that can be used by DNR to resolve subsurface and other resource conflicts. AS 38.05.185(a) requires that before an area of state land can be closed to mining or mineral location, the commissioner must make a written finding that mining would be incompatible with significant surface uses. Using the criteria established in AS 38.05.185(a), DNR generally finds mining to be incompatible with the surface uses listed below and closes the area to mining or mineral location at the specified times in the decision making process. However, each situation will be evaluated separately and a determination made that the requirements of AS 38.05.185(a) have been met.

A. Areas Scheduled for Disposal. Land scheduled for commercial, industrial, agricultural, or subdivision sale will be closed to mining and mineral location at the end of the first year of the Land Availability Determination System (LADS) process (that is, approximately 2 years before the anticipated land sale).

B. Homesteading Areas. Lands available for homesteading (including agriculture homesteading) will be closed to mining and mineral location at the end of the first year of the LADS process (that is, approximately 2 years before the anticipated land sale). These areas will remain closed until the allowed number of homestead entries has occurred. At that time, those portions of the project area with few or no homesteads will be reopened for mineral entry and location unless it is determined that the settlement pattern that has resulted creates significant, irreconcilable land use conflicts.

C. Land Proposed for Exchange. Lands proposed for exchange or trade will be closed to mineral entry and location at the time a preliminary agreement to exchange the land is reached.

D. Land to be Transferred to Another Public Agency. Lands reserved for transfer to another public agency for development of a public facility or reserved as a future townsite will be closed to mineral entry and location at the time the area is classified "reserved use" or an Interagency Land Management Agreement is signed.

Guidelines for the Application of the Locatable Mineral Leasing Program

Requiring that locatable mineral developments occur under a lease is a more flexible management tool than mineral closure. Therefore, mineral leasing is preferred over mineral closure as a management option to resolve conflicts between other significant resources and mining and mineral location. AS 38.05.185(a) requires that the commissioner determine that potential use conflicts on 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. Under 11 AAC 86.135(b), if a surface disposal area is not closed entirely to mineral entry, it will be made available only by leasehold location.

After consultation with ADF&G and DEC, and concurrent with the designation of an area being open to locatable mineral entry under lease, DNR will identify potential conflicts between other resources and mining and other resources that need protection. DNR will also state the general nature of stipulations to be used in leases to protect those other resources.

Resource Values that May be in Conflict with Coal or Mineral Development

The decision to apply mineral closures or locatable mineral leasing will be made by the commissioner within the parameters set by the Alaska Statutes. AS 38.05.185(a) requires that the commissioner determine that mining is incompatible with a significant surface use before an area can be closed to mining. The same section of the statutes requires that the commissioner determine that a potential use conflict exists before requiring that development of locatable minerals be conducted only under a lease.

In some circumstances, the commissioner may find that some resource values require locatable mineral leasing, closure, or a prohibition of coal leasing and prospecting to protect their continued productivity and availability. In other circumstances, care during mineral development is all that may be necessary to protect these resources. It is impossible to predict the degree of conflict that could occur between mining and any other resource value in all circumstances. Therefore, the following categories of resource values will be evaluated to determine if locatable

mineral leasing, prohibition of coal leasing or prospecting, or another management option is needed to protect the continued productivity and availability of the resource in conflict.

A. Retained Lands with Significant Commercial, Industrial, or Public Use Values

- Lands with significant coal, oil and gas, timber or other commercial potential.
- Lands recognized as future transportation corridors where access for pipelines, road, railroads, or other surface transportation infrastructure could be blocked or impeded by mining claims. (After the alignment is established, areas will be reopened if they are surplus land.)
- Lands and waters that provide unique or unusual opportunities for human use and enjoyment, such as fishing, hunting, trapping, photography, and fish and wildlife viewing.
- Lands and waters that provide significant recreation opportunities, such as clear water rivers that are now or are expected to be important for recreation, key public access sites, and recreation facilities.
- Lands and waters that are the watershed of a community water supply.
- Sand and gravel pits, stone quarries, or other significant known material sites where development might be impeded if mineral claims were staked.

B. Retained Lands With Significant Fish or Wildlife Resources

- Lands and waters that support protected species of plants, fish or wildlife (bald and golden eagles), threatened species (Arctic peregrine falcon), or endangered species (American peregrine falcon).
- Lands and waters that support production or maintenance of fish or wildlife species that have significant economic, recreational, scientific, educational, or cultural values or which have been given special protection through state or federal legislation or international treaty.
- State game refuges, critical habitat areas, and sanctuaries. (In decision memorandum 44 signed by the commissioner in January 1984, DNR set the statewide policy that in legislatively established Critical Habitat Areas and Wildlife Refuges mining will occur under lease. Also, individual legislatively designated areas may be recommended for mineral closure, but such a closure would be decided case by case using the criteria found in AS 38.05.185(a).)
- Other lands and waters not included above that are known to support unique or unusually large assemblages of fish or wildlife.

Oil and Gas Guidelines

Generally, oil and gas exploration, development, and production will be encouraged on state lands. Impacts on other important uses and resources will be managed through appropriate mitigation measures such as those contained in this plan and those developed during the permitting and leasing processes.

Oil and gas guidelines are not addressed here. Oil and gas guidelines specific to a particular management unit are found in Chapter 3. DNR's statewide policies for oil

and gas are found in the Five-Year Oil and Gas Leasing program. Specific stipulations for oil and gas exploration, development, and production activities will be developed and applied case by case for each oil and gas lease sale using the lease sale process.

Other Guidelines Affecting Subsurface resources

Several other guidelines may affect subsurface resources. See the following sections of this chapter:

- Fish and wildlife habitat
- Settlement
- Transportation
- Public Access
- Stream corridors and instream flow
- Trail management
- Wetlands management

Land Allocation Summary

Minerals. Mining is a primary use in the Slate Creek mining area which is the only state land with extensive mining activity. Most other mining claims and most lands with mineral potential in the Copper River Basin occur on Native lands or private claims located in the Wrangell Mountains. Approximately 3.15 million acres (97 percent) of the state land in the basin remains open to mineral entry. Approximately 108,000 acres (3 percent) of the state land in the basin would be closed to mineral entry to protect certain recreation and fish resources. Additional acreage (approximately 36,000 acres, or 1 percent) would be closed for land disposals before individual land offerings. State land remains open to mineral entry except for the Kettlehole Lakes - Mendeltna recreation area, Thompson Pass transportation and utility corridor, and the streams and lakes listed below. The north shore of Tazlina Lake, which contains extensive archaeological sites, will also be closed to new mineral entry. The following areas would be closed to new mineral entry to protect important salmon spawning and rearing areas, resident fish habitat, recreation and scenic resources:

- Mendeltna Creek and Old Man Lake
- Tolsona Creek
- Kaina Lake and Creek
- St. Anne Creek
- Klutina Lake and River above Manker Creek
- Mahlo River
- Manker Creek
- Tonsina Lake and River above Rainbow Creek
- Greyling Creek
- Bernard Creek
- Long Lake and Long Lake outlet
- Nizina River - Dan Creek to Spruce Point
- Slana River above Lost Creek
- Ahtel Creek
- East Fork Chistochina River below Mankomen Lake
- Unnamed tributary to Gakona River near Alder Lake and Swampy Lake
- Spring Creek
- Gulkana River

Paxson Lake
Summit Lake
Gunn Creek and Gunn Lakes
Fish Creek and Fish Lakes
Crosswind Lake

State-owned uplands within 200 feet of mean high water on both sides of these streams would also be closed to new mineral entry.

Oil and Gas. All state land is available for oil and gas exploration and leasing except state-owned shorelands under the Gulkana River. The Gulkana River is a National Wild River and adjacent federal lands are withdrawn from leasing. Seasonal restrictions may be applied to oil and gas activities in the trumpeter swan habitat areas.

Other Leaseable Minerals (Coal, sedimentary uranium, potassium, sodium, oil shale, geothermal). Any leases will be dealt with case by case consistent with the intent of the appropriate management unit.

Minerals Policy Act Compliance Form
as required by AS 44.99.110

Department/Board/Commission Name:

Office of the Ombudsman

Mailing Address:

Box 10
Juneau AK 99811-3000

Agency Contact:

Juneau Anchorage Fairbanks
Dunegan Fowler / Rosa Garner / Sandra McCoy

Telephone:

465-4970 / 277-8848 / 452-4001

Please complete the following information requests:

- Does your agency have statutory authority, regulations or procedures applicable to mineral exploration and development?

Yes

No ^{Specifically}

If no, then additional information is not required. Return form to DNR in the pre-addressed envelope provided.

Note: This office does have the authority to review any administrative act of state government as such we can investigate both the legality & fairness of actions. See AS 24.55.

Please list those statutes and regulations which are applicable to mineral exploration and development:

- Does your agency have written procedures (not including statutes and regulations) applicable to mineral exploration and development?

Yes

No

- Do your agencies statutes, regulations and procedures comply with Section 1 of the Minerals Policy Act?

Yes

No

If no, please list those statutes, regulations or procedures that do not comply:

Please return this completed form to the Department of Natural Resources in the pre-addressed envelope provided. Thank you.

Minerals Policy Act Compliance Form
as required by AS 44.99.110

Department/Board/Commission Name: Alaska Public Utilities Commission
Mailing Address: 420 L Street, Suite 100
Anchorage, Alaska 99501
Agency Contact: _____
Telephone: (907) 276-6222

Please complete the following information requests:

1. Does your agency have statutory authority, regulations or procedures applicable to mineral exploration and development?

Yes No If no, then additional information is not required. Return form to INR in the pre-addressed envelope provided.
PUC regulates intrastate pipelines: This indirectly affects mineral exploration and development.

2. Please list those statutes and regulations which are applicable to mineral exploration and development:

AS 42.06 (indirectly) _____

3. Does your agency have written procedures (not including statutes and regulations) applicable to mineral exploration and development?

Yes No

4. Do your agencies statutes, regulations and procedures comply with Section 1 of the Minerals Policy Act?

Yes No If no, please list those statutes, regulations or procedures that do not comply:

Please return this completed form to the Department of Natural Resources in the pre-addressed envelope provided. Thank you.

February 16, 1989

SENATE JOURNAL

p. 443

SB 178

SENATE BILL NO. 178 by Senator Coghill, entitled:

"An Act relating to the review and reporting requirements of agencies of the state relating to the state mineral policy."

was read the first time and referred to the Resources Committee and the Finance Committee.

March 21, 1989

SENATE JOURNAL

p. 887

SB 178

Senator Frank moved and asked unanimous consent that he be shown as a co-sponsor on SENATE BILL NO. 178 (An Act relating to the state mineral policy). Without objection, it was so ordered.

April 25, 1989

SENATE JOURNAL

p. 1415

SB 178

The Resources Committee considered SENATE BILL NO. 178 (An Act relating to the review and reporting requirements of agencies of the state relating to the state mineral policy) and a majority of the committee recommended it be replaced with

CS FOR SENATE BILL NO. 178 (Resources)

and do pass. The report was signed by Senator Fahrenkamp, Chair, and concurred in by Senators Frank, Sturgulewski and Halford. Senator Zharoff signed "no recommendation."

Fiscal note from Department of Natural Resources and zero fiscal note from Department of Environmental Conservation for SENATE BILL NO. 178 published today. Zero fiscal notes for the committee substitute published today from Department of Natural Resources, Department of Commerce and Economic Development, Department of Fish and Game, Office of the Governor, Department of Revenue and University of Alaska. Fiscal note for the committee substitute forthcoming.

SB 178 cont'd

SENATE BILL NO. 178 was referred to the Finance Committee.

April 26, 1989

SENATE JOURNAL

p. 1437

SB 178

Zero fiscal note for Committee Substitute for Senate Bill No. 178 (Resources) (An Act relating to the review and reporting requirements of agencies of the state relating to the state mineral policy) published today from Department of Fish and Game.

April 27, 1989

SENATE JOURNAL

p. 1481

SB 178

Zero fiscal note for Committee Substitute for Senate Bill No. 178 (Resources) (An Act relating to the review and reporting requirements of agencies of the state relating to the state mineral policy) published today from Department of Environmental Conservation.

January 17, 1990

SENATE JOURNAL

p. 2120

SB 178

The Finance Committee considered SENATE BILL NO. 178 (An Act relating to the review and reporting requirements of agencies of the state relating to the state mineral policy) and a majority of the committee recommended it be replaced with

CS FOR SENATE BILL NO. 178 (Finance), entitled:
"An Act relating to the review and reporting requirements of agencies of the state relating to the state mineral policy; and providing for an effective date."

and do pass. The report was signed by Senators Binkley and Uehling, Co-Chairs, and concurred in by Senators Zharoff, Duncan, Frank and Pearce.

SB 178 cont'd

Zero fiscal notes published today from Department of Environmental Conservation, Department of Natural Resources, Department of Commerce and Economic Development, Department of Fish and Game, Office of the Governor, Department of Revenue and University of Alaska.

SENATE BILL NO. 178 was referred to the Rules Committee.

S B

181

Alaska State Legislature

Al Adams
District L

WHILE IN SESSION
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3707

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3245

3111 C Street
Anchorage, Alaska 99503
(907) 561-7622

Official Business

MAR 06 1989

TO: BETTYE FAHRENKAMP, CHAIR
SENATE RESOURCES COMMITTEE

FROM: AL ADAMS, CHAIR *AA*
COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

RE: SB 181, "AN ACT RELATING TO AN EXEMPTION FROM
MUNICIPAL PROPERTY TAXATION FOR NATURAL RESOURCES
IN PLACE; AND PROVIDING FOR AN EFFECTIVE DATE."

DATE: MARCH 3, 1989

THIS IS TO REQUEST SCHEDULING OF THE AFOREMENTIONED LEGISLATION
IN THE SENATE RESOURCES COMMITTEE AT YOUR EARLIEST CONVENIENCE.

THE DOCUMENTS IN THE REFERRAL FILE CLEARLY IDENTIFY THE NEED FOR
THIS LEGISLATION. IT IS A LEGISLATIVE PRIORITY OF THE ALASKA
MUNICIPAL LEAGUE AND BENEFITS MANY MUNICIPALITIES IN THE
STATE.

THE BILL WAS HEARD IN THE COMMUNITY AND REGIONAL AFFAIRS
COMMITTEE THIS WEEK AND A COMMITTEE SUBSTITUTE MADE A MINOR
CHANGE IN THE DATE THE TEMPORARY ACT WOULD BE REPEALED FROM
JANUARY 1, 1992 TO JULY 1, 1991.

IF YOU OR YOUR STAFF HAVE QUESTIONS PLEASE DO NOT HESITATE TO
CONTACT MY AIDE MARTHA STEWART AT 465-3707.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE _____
IN ACCORDANCE WITH UNIFORM RULE 23

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

FURTHER RES
FIN
DATE TURNED INTO OFFICE _____

2/17/89

Mr. President:

C&RA

Committee considered SB 181

exemption from municipal property taxation for natural resources
in place; efd

and recommended:

- replace with CS C&RA same title
- attached amendment(s) and new title
- _____ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

FISCAL NOTE(S) attached zero fiscal impact
 appropriation no FN attached Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]

[Signature] - no rec
[Signature] no rec.

[Signature] - DO PASS
Chairman signature and recommendation

Committee backup attached

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act..exemption from municipal
 property taxation for natural resources.."
 Sponsor: Senator Adams
 Requestor: Senate C&RA Committee

Agency Affected: Community & Regional Affairs
 BRU: State Assessor
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plasmany Deputy Director
 Division: Municipal & Regional Assistance

Phone: 465-4750
 Date: 2/24/89

Approved by Commissioner: [Signature]
 Agency: Community & Regional Affairs

Date: 24 Feb 89

Distribution (by preparer):


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

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325
FAX 463-5480

217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

TO: Senator Al Adams, Chair
Members of the Senate Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director 

DATE: February 28, 1989

SUBJECT: SB 181 - Municipal Property Tax Exemption for In Place Resources

The Alaska Municipal League supports SB 181. Recognizing the significance of the issue of municipalities imposing or not imposing a property tax on natural resources in place, the AML membership passed Resolution No. 89 - 21 (attached) at the annual business meeting in November 1988. After further analysis, the AML Board of Directors added the legislative resolution of the concern raised by the Department of Community and Regional Affairs earlier this year to its 1989 legislative priorities outlined in the AML Municipal Platform. SB 181 reflects the approach supported by the AML and the AML urges passage by the Legislature.

As outlined in AML Resolution No. 89 - 21, municipalities and the State of Alaska are required by law to include the values of natural resources in place (e.g. minerals, timber etc.) on local assessment rolls and in the full value determination, respectively, for purposes of taxation. Neither does because neither has the staff or fiscal resources to value the resources, and the inclusion of values for those resources would likely have a negative impact on residential property and on municipalities under the state revenue sharing and education funding formulas. Exempting the resources from property tax would recognize the difficulty of taxing natural resources in place and the status quo.

However, given the decline in state aid to municipalities and the increasing demand to provide additional local services with local tax dollars, limiting a potential tax base should be approached with caution. When the issue of taxing in place resources was raised earlier this year, the Department of Community and Regional Affairs stimulated significant discussion and debate around the State, especially among the municipalities and with the Department of Revenue. SB 181 calls for a temporary, two-year property tax exemption on natural resources in place to recognize the status quo, and it also calls for a study by the Department of Community and Regional Affairs to compare the potential effects of total exemption, partial exemption, no exemption and optional exemption. In conducting the study, DC&RA will consult with the Department of Revenue and the AML. The approach outlined in SB 181 with a temporary exemption and a study will take care of the immediate situation and provide for more understanding of the issue, a discussion of alternatives, and the development of a consensus on a long-term or permanent solution.

AML Testimony on SB 181
February 28, 1989
Page 2

In order to meet the legislative session and to adequately prepare for changes in the assessment process, the AML would request one amendment to the legislation:

Amend Sec. 3, page 2, line 1 as follows:

"This Act is repealed July 1, 1991 [January 1, 1992]."

This would provide adequate time for the study to develop recommended long-term legislative solutions (two years) and for the legislature to act. Assessment roles are determined as of January 1st of each year; therefore, in order for the municipality to add property to the assessment rolls if required by legislation passed in 1991 session and to assess in 1992, the assessors would have to do their work during the summer and fall of 1991 and have the property on the rolls by January 1, 1992.

Finally, the AML wants clarification either in testimony or in legislation that municipalities have the authority under law to place a severance tax on natural resources whether or not natural resources in place are exempt from property tax.

Again, the AML supports SB 181 as a legislative priority of municipalities across the State.

Attachment

MEMORANDUM

State of Alaska

Department of Law

TO: Bob Evans, Legislative Liaison
Office of the Governor

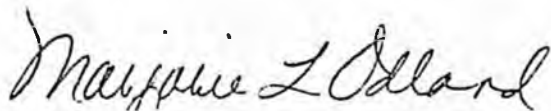
DATE: April 26, 1988

FILE NO: 663-88-0410

TEL. NO: 465-3600

SUBJECT: Exemption of "in place"
natural resources

FROM:



Marjorie L. Odland
Assistant Attorney General
Governmental Affairs-Juneau

You have requested our opinion regarding a draft bill exempting "in place" natural resources from municipal taxation (Our file: 773-88-0061). You have several concerns regarding the effect and necessity of this bill which will be addressed individually below.

1. What is the state's current obligation regarding the assessment of "in place" natural resources in the full-value determination of a borough or municipality?

The standard by which a local assessor must assess property is set out in AS 29.45.110(a), which reads:

The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section, AS 29.45.060 and 29.45.230. The full and true value is the estimated price that the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

Under the above statute, a local assessor must assess all taxable property in accordance with the standard. The determination as to whether "in place" natural resources must be included in the assessment of property and the state's liability for insuring the inclusion of assessment of "in place" natural resources by municipalities is central to your question.

To date, municipalities have not assessed "in place" natural resources. Additionally, the state has not required municipalities to include these resources when determining full and true value of property under AS 29.45.110. There is no case law in Alaska interpreting AS 29.45.110 with respect to assessment requirements of "in place" natural resources nor is there a case

in Alaska holding that it is mandatory for these resources to be included in property assessment. However, it is the opinion of this office that "in place" natural resources may correctly be included in the full value determination of a municipality under AS 29.45.110(a) and that the Alaska Supreme Court would support this opinion.

Looking to other states' court opinions and treatise law, it is generally held that the right to tax is purely of statutory creation, and practically all of the authorities are to the effect that assessors, in valuing property, may take into consideration the fact that property contains undeveloped minerals in such quantity as to enhance the value of the land over its mere surface value. See 2 A.L.R. 1550-1553 and cases cited therein. It has also been held that minerals in place are not rendered nontaxable merely because of lack of legislative method and regulation for determining their value. Greene County v. Lattas Creek Coal Co., 100 N.E. 561 (Ind. 1913); 72 Am.Jur.2d State and Local Taxation § 764.

There is case law supporting the view that assessors are required to value for taxation all real property according to its market value. Under those decisions, value is measured by all the circumstances and advantages that tend to enhance it, of which underlying minerals, if accessible, are most important items, so that they must necessarily be included in the valuation. See, e.g., Logan v. Washington County, 29 Pa. 373, 14 Mor. Min. Rep. 108 (Penn. 1857). Any element of value tending to affect selling price "may" be taken into consideration by the assessor in arriving at a proper valuation for assessment purposes. Washington County v. Marquis, 82 Atl. 756 (Penn. 1912). The decisions of the courts in these two cases appear to have been based upon statutes similar in wording to AS 29.45.110(a).

Of main import, is that none of the authorities we found held for the premise that liability attaches to the state or local taxing entity for failure to include "in place" natural resources in their assessments. The authorities we found were based upon cases where a taxpayer was challenging the authority of the taxing jurisdiction to include the value of "in place" natural resources in the assessment of their property.

Furthermore, we found no cases holding that local or state assessors are required to search out "in place" natural resources in order to include them in the assessment of property. The cases mainly hold that it is correct for assessors to take into consideration all "facts" directly affecting the value. It is our opinion that this general rule concerns facts which affect

Bob Evans, Legislative Liaison
Office of the Governor
663-88-0410

April 26, 1988
Page #4

of deprivation of due process or equal protection against the state must fail. The Alaska Supreme Court recently ruled that a municipality is not a "person" and therefore may not assert due process or equal protection claims against its creator, the state. Kenai Peninsula Borough v. State, ___ P.2d ___, Op. No. 3277 (Alaska, Mar. 4, 1988).

If the state changes its application of AS 29.45.110-(a), rules of contemporaneous construction generally hold that a reversal in interpretation of a statute by the administering agency will be applied only prospectively. 2A N. Singer, Sutherland Statutory Construction § 49.05, (4th ed. 1984 rev.) (hereafter "Sutherland"). In other words, if the state reverses its interpretation and administration of AS 29.45.100(a) requiring municipalities to assess "in place" natural resources in their determinations of full value, the state's new interpretation most likely will apply only to future years; not retroactively.

We note that there is caselaw in other states supporting the following viewpoint:

the mere failure of public officers charged with the duty to enforce statutory and constitutional provisions in respect to the levy and collection of taxes, or the acquiescence of public officers in conditions that exempted certain property from taxation, should not be permitted to stand in the way of the "correct" administration of the law, or be construed to estop more diligent and efficient public officers when they attempt to perform their duty by bringing in to the revenue proper subjects of taxation that had theretofore been allowed to escape the payment of taxes.

Sutherland § 49.05 (citing Louisville v. Board of Education, 154 S.W. 379, 380-381 (Ky. 1913)).

Based upon the above viewpoint, we believe that the present state assessor has correctly pointed out that "in place" natural resources may be included in municipal assessments, and properly should be included. However, as noted above, it is the opinion of this office that no liability attaches to the state for failure to insist on the assessment of these resources at this time.

3. Is it your opinion that this exemption from municipal resources is necessary?

Bob Evans, Legislative Liaison
Office of the Governor
663-88-0410

April 26, 1988
Page #5

Probably yes, for the main purpose of addressing the issue and clarifying the state's application and interpretation of AS 29.45.110(a). We do not believe any retroactive liability will attach if the state does not immediately provide for this exemption in the law. Additionally, the state may wish to consider whether it wants to make the exemption of "in place" natural resources from municipal taxation mandatory upon the municipalities or whether to allow municipalities the option of providing for the exemption of these resources from taxation.

We hope this addresses your concerns. Please do not hesitate to contact us if you need further assistance on this matter.

MLO/pig

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§ 29.45.103

MUNICIPAL GOVERNMENT

§ 29.45.110

Sec. 29.45.103. Taxation records. (a) Municipal records dealing with assessment, valuation or taxation may be inspected by the State Assessor or a designee.

(b) If a municipality's assessment and valuation has been done by a private contractor, records concerning the municipality's valuation and assessment shall be made available to the State Assessor or a designee on request. (§ 12 ch 74 SLA 1985)

Sec. 29.45.105. Errors in taxation procedures. (a) If a municipality receives a notice from the State Assessor that major errors have been found in its assessment, valuation or taxation procedures, the municipality shall correct its procedures before the beginning of the next fiscal year or file an appeal under (b) of this section.

(b) A municipality may appeal a notice from the State Assessor that it has made a major error in assessment, valuation or taxation procedures by filing an appeal with the commissioner within 30 days after receipt of notice of error.

(c) The commissioner, after consulting with the Alaska Association of Assessing Officers, shall render a decision within 60 days after the receipt of a request under (b) of this section. If the commissioner determines that a major error has been made in assessment, valuation or taxation procedures the commissioner shall notify the municipality of changes that must be made and the municipality shall correct its procedures before the beginning of the next fiscal year.

(d) If errors in its assessment, valuation or taxation procedures have resulted in a loss of revenue to the state, the municipality shall reimburse the state for the amount of revenues lost. (§ 12 ch 74 SLA 1985)

Sec. 29.45.110. Full and true value. (a) The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section, AS 29.45.060, and 29.45.230. The full and true value is the estimated price that the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the governing body.

(c) In the case of cessation of business during the tax year, the municipality may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by

this section, the municipality may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes. (§ 12 ch 74 SLA 1985)

Opinions of attorney general. — Valuation of boats and vessels on the basis of registered or certified tonnage rather than full and true value does not limit the

application of the full and true value as to boats and vessels. 1962 Op. Att'y Gen. No. 18, decided under former, similar law.

NOTES TO DECISIONS

Editor's notes. -- The cases cited in the notes below were decided under former, similar provisions.

The equal protection clause does not compel the adoption of an iron rule of equal taxation. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

The equal protection clause does not prohibit inequality in taxation which is not shown to be the result of an intentional or systematic undervaluation of some but not all of the taxed property in a single class. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

And it does not forbid differences in tax burdens founded upon substantial and reasonable differences between the objects taxed. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

A borough has discretion to appraise by whatever recognized method of valuation it chooses, so long as there is no fraud or clear adoption of a fundamentally wrong principle of valuation. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

Income from property is not sole standard of value. — Although the income from property may be a legitimate factor to consider in fixing value for tax purposes, it is not the sole standard to apply. *Twentieth Century Inv. Co. v. City of Juneau*, Sup. Ct. Op. No. 42 (File No. 42), 359 P.2d 783 (1961).

Computing reconstruction cost and depreciation of dissimilar buildings. — Where two buildings are dissimilar in size, age, and basic construction, it would be entirely reasonable for the assessor to use different factors in computing reconstruction cost and depreciation, and thus achieve substantial equality and fair equivalence. *Hoblit v. Greater Anchorage*

Aren Borough, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

Differences in construction materials between given structures are obvious distinctions sufficient to warrant the difference in treatment accorded by the assessor, and to nullify the charge that his actions were arbitrary and resulted in a lack of uniformity. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

Assessor is empowered to reduce assessments in later years where the results of disasters have reduced market value. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

The borough assessor had the power to grant earthquake decrements. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

Property was not entitled to an earthquake decrement for tax assessment purposes where there was an absence of evidence indicating that its market value was reduced. *Hoblit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 630 (1970).

Statutory deadlines are directory. — Statutory deadlines for assessment of taxes, setting of mill levy, and mailing of tax statements should be construed as directory; and a city's failure to meet such statutory deadlines does not automatically invalidate its decisions. *City of Yakutat v. Ryman*, Sup. Ct. Op. No. 2581 (File Nos. 6033, 6099), 654 P.2d 785 (1982).

Burden of proof. — When a taxpayer establishes a violation of "directory" procedures regarding assessment of taxes, setting of mill levy, and mailing of tax statements, the burden should be on the taxing authority to demonstrate substantial compliance with requirements and purposes of the statute; but once a show-

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Alaska State Legislature

Al Adams
District L

WHILE IN SESSION
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3707

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3245

3111 C Street
Anchorage, Alaska 99503
(907) 561-7622

Official Business

APR 5 1989

TO: Senator Bettye Fahrenkamp, Chair
Senate Resources Committee

FROM: Senator Al Adams, Chair ^{AAA}
Community and Regional Affairs Committee

RE: Senate Bill 181 and House Bill 159

DATE: March 31, 1989

Senate Bill 181 regarding tax exemptions for natural resources in place was referred to the Senate Resources Committee on March 6. A request for scheduling and committee back up material was provided on the same date. Given that the bill has not been scheduled, I am left to assume it died in your committee.

Identical legislation sponsored by Representative Eileen MacLean will be waived from Senate Community and Regional Affairs Committee as we heard the Senate version already. The next committee of referral is the Senate Resources committee.

This letter is to ask your cooperation in scheduling Representative MacLean's bill at your earliest convenience. It is a benign piece of legislation that warrants a hearing and eventual passage during this session.

cc: Representative MacLean

S B

184

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 4/7/89
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

FIN

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 4/14/89

2/17/89

Mr. President:

RESOURCES

Committee considered

SB 184

establishing the Redoubt Bay Critical Habitat Area; efd

and recommended:

replace with CS SB 184 (Resources) same title
 attached amendment(s) and new title

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) attached ADFG, DNR zero fiscal impact
 appropriation no FN attached Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
[Signature]

Rick Halford NO REC
[Signature]
[Signature] No Rec

[Signature]
Chairman signature and recommendation
Acting Chairman

Committee backup attached

**STATE OF ALASKA
1989 LEGISLATIVE SESSION**

BILL VERSION: SB 184
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 3-Mar-89 Agency Affected: Natural Resources
Title: Redoubt Bay Critical habitat Area BRU: Land & Water Management
Sponsor: Fischer Components: Land & Water Mgt
Requestor: Senate Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0					

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Larry Ostrovsky Phone: 465-2400
Division: Commissioner's Office Date: 3-Mar-89
Approved by Commissioner: Lennie Gorsuch Date: 3-Mar-89
Agency: Department of Natural Resources

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



STATE OF ALASKA
OFFICE OF THE GOVERNOR

MAR 02 1989

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER SB184	SPONSOR Senator Fischer
SHORT TITLE OF BILL Redoubt Bay Critical Habitat Area			
DEPARTMENT POSITION Support with amendment			
PREPARED BY Frank Rue, Director	DATE 3/1/89	COMMISSIONER'S SIGNATURE <i>Wm. Kellyworth</i>	DATE 3.2.89

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Natural Resources	CONSTITUENT GROUP(S) AFFECTED BY BILL Southcentral recreational hunters and fishermen; Commercial Fishermen
ORGANIZATIONAL SUPPORT FOR BILL Kenai Peninsula hunters and fishermen (see attached list)	ORGANIZATIONAL OPPOSITION TO BILL None Known

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
The purpose of establishing Redoubt Bay Critical Habitat Area is to provide:
1) Protection and enhancement for fish and wildlife habitat.
2) Conservation of fish and wildlife.
3) Continued opportunity for hunting, fishing, and trapping.
4) Public use and enjoyment of the area.

ANALYSIS OF BILL/PROGRAM EFFECTS

- Establishes Redoubt Bay Critical Habitat Area.
- Identifies the purpose for which the area is established.
- Ensures continued access to private inholdings and provides for acquisition of private property from willing sellers.
- Provides for oil and gas exploration and development.
- Allows for continued fish and wildlife harvest and public use.
- Establishes a citizens' advisory committee.

AMENDMENTS PROPOSED
See attached

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

Amendments Proposed

1. Give the purpose statement a statute number (AS 16.20.620(a) or (b)) so that it will appear in statute.
2. Change (d) to read, "The department shall permit entry within the Redoubt Bay Critical Habitat Area for the exploration and development of oil and gas resources when it is compatible with the purposes for which the critical habitat area is established. An oil and gas lease of state land within the critical habitat area and existing pipeline rights-of-way [IS] are valid and continue[S] in full force according to [ITS] their terms."
3. Add a new subsection (e) to read, "(e) Inspection and maintenance activities necessary to ensure the integrity of oil and gas transportation systems shall be permitted on existing leases and pipeline rights-of-way in a manner that is compatible with the purposes for which the critical habitat area is established." This will accommodate concerns about pipeline maintenance.
4. Combine (f) and (g) and change them to read, "The department shall establish a citizens' advisory committee to advise the department in the development of policies and regulations that affect Redoubt Bay Critical Habitat Area. The citizens' advisory committee shall include representatives of fish and wildlife harvest activity, cabin owners, conservation interests, commercial and industrial activity, and borough government." This will provide a more enforceable mechanism for establishment and maintenance of the citizen's advisory committee.

Organizational Support for Redoubt Bay Critical Habitat Area

Kenai-Soldotna Fish and Game Advisory Committee

Central Peninsula Fish and Game Advisory Committee

Cooper Landing Fish and Game Advisory Committee

Homer Fish and Game Advisory Committee

Cook Inlet Aquaculture Association

Kenai Peninsula Chapter Audubon Society

Kenai Trappers Association

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Redoubt Bay Critical
habitat Area
 Sponsor: senator Fischer
 Requestor: _____

Agency Affected: ADFG
 BRU: Habitat
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		0				
TRAVEL		0				
CONTRACTUAL		0				
SUPPLIES		0				
EQUIPMENT		0				
LAND & STRUCTURES		0				
GRANTS, CLAIMS		0				
MISCELLANEOUS		0				
TOTAL OPERATING		0				

CAPITAL		0				
---------	--	---	--	--	--	--

REVENUE		0				
---------	--	---	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS						
OTHER						
TOTAL		0				

POSITIONS:

FULL-TIME		0				
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Frank Rue, Director *Elean Fuller for FR*
 Division: Habitat

Phone: 465-4105
 Date: 3/01/89

Approved by Commissioner: *Oneil*
 Agency: Dept. of Fish and Game

Date: 3.2.89

Distribution (by preparer):

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

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION CS SB 184 (Resources) 24

PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 3-Mar-89 Agency Affected: Natural Resources
 Title: Redoubt Bay Critical habitat Area BRU: Land & Water Management
 Sponsor: Fischer Components: Land & Water Mgt
 Requestor: Senate Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
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CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
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PART-TIME						
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 Agency: Department of Natural Resources

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

Alaska State Legislature



State Senate

Senator Paul Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269

While in Juneau
P.O. Box V
Juneau, Alaska 99811
(907) 465-3791

MEMORANDUM

TO: Senator Bettye Fahrenkamp, Chairman
Senate Resources Committee

FROM: Senator Paul Fischer *PF*

SUBJECT: Senate Bill 184
(establishing Redoubt Bay Critical Habitat Area)

DATE: March 6, 1989

I would appreciate your scheduling the above referenced bill before the Senate Resources Committee at your earliest possible convenience.

As you are aware, similar legislation received considerable review during the Fifteenth Legislature. I've attached fiscal notes from the Departments of Fish and Game and Natural Resources, as well as background and historical information.

Your consideration will be greatly appreciated.

PAF/sgn

Attachments

Redoubt Bay Critical Habitat "Fact Sheet"

Past Legislation			Requested By
Year	Bill No. & Type		
1987	SB 426 Critical Habitat		Local Organizations
1981	HB 66 State Refuge		State of Alaska
1978	SB 262, HB 391 State Refuge		State of Alaska

Legislative Intent of 1987 Request
Protect fish and wildlife habitat with emphasis on the Tule White-front Goose;

Continue established public and private uses and assure continued public access to the entire area.

1988 Sponsors

Kenai Soldotna Fish & Game Advisory Committee
Ninilchik Fish & Game Advisory Committee
Cooper Landing Fish & Game Advisory Committee
Homer Fish & Game Advisory Committee
Cook Inlet Aquiculture Association
Kenai Trappers Association
Kenai Peninsula Chapter, Audobon Society

Fish and Wildlife Resources.

Tule White-fronted Goose, nesting habitat.
Waterfowl, ducks 14 species, geese 4 species, swans 2 species; nesting & migration habitat.
Moose calving, summer range, rutting area & winter range.
Brown & Black Bear, summer habitat.
Furbearers, 11 species; year round habitat.
Salmon, 5 species; spawning habitat.
Rainbow & Dolly Varden Trout, year round habitat.
Also raptors, shore birds, song birds, and various small mammals.

Location

West side of Cook Inlet approx. 25 miles west of Kenai.
Senate Districts D & M
House Districts 5 & 24

Access

By boat or light aircraft only

Permanent Residents

None.

Established Uses

Gas/oil transportation pipe line, commercial fishing, fisheries enhancement, guiding, big game and waterfowl hunting, sport fishing, trapping, general recreation.

Potential Uses

Gas/oil production, sport fishing lodges, recreational land disposals, tourist oriented facilities, additional fishery enhancement.

Land Status

Approximately 183,640 acres of poorly drained coastal marsh and waterways patented to the State of Alaska . Two private holdings totalling less than 10 acres. Leases for 47 private cabins used for commercial fishing and recreational purposes. Established right of way for gas/oil transportation pipeline.

Suggested amendments to SB 426

1. Management with a citizen advisory committee. Recommended by the Kenai Peninsula Borough Planning Commission and supported by the Kenai-Soldotna Fish and Game Advisory Committee.
2. Provisions for maintenance of the gas/oil pipeline. Recommended by Cook Inlet Pipeline Co.
3. Boundary adjustments and provisions for maintenance of the gas/oil pipeline. Recommended by ADF&G.

Redoubt Bay Critical Habitat "Fact Sheet"

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Fish and Wildlife Resources.

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Moose calving, summer range, rutting area & winter range.
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3. Boundary adjustments and provisions for maintenance of the gas/oil pipeline. Recommended by ADF&G.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF FISH AND GAME

333 RASPBERRY ROAD
ANCHORAGE, ALASKA 99518-1599
PHONE: (907) 344-0541

January 19, 1989

JAN 25 1989

The Honorable Paul Fischer
Alaska State Senate
P. O. Box V
Juneau, Alaska 99811

Dear Senator Fischer:

On December 22, 1988, your staff requested of Mr. Jim Faro that he provide you with additional background information on Redoubt Bay. On behalf of Mr. Faro and the department, we will do so now.

The coastal marsh and streams of Redoubt Bay are highly productive fish and wildlife habitat and provide Alaska residents with significant annual harvests of salmon, trout, moose, bear, waterfowl, furbearers and other fish and game. Nationally, Redoubt is significant because of the nesting area for tule white-fronted geese, a subspecies that exists in low numbers.

The Alaska Department of Fish and Game (ADF&G) has twice before sought special legislative designation for the area because of these high resource values. Since 1981, ADF&G has worked with the Kenai Peninsula public to develop a locally acceptable legislative package. In 1987, four separate Fish and Game Advisory Committees and three resource oriented organizations located on the Kenai requested the Legislature to establish the Redoubt Bay Critical Habitat Area. In response you introduced SB 426.

That bill worked it's way through several Senate Committees and in the process, public review and modifications occurred by persons not previously involved in the original request. There has been continued work on provisions of SB 426 in anticipation of this legislative session. The following changes suggested by different organizations were provided to your staff by Mr. Faro on December 22, 1988:

1. Management with assistance of a citizen advisory committee - recommended by the Kenai Peninsula Borough Planning Commission and supported by the Kenai-Soldotna Fish and Game Advisory Committee;
2. Provisions for maintenance of the gas/oil pipeline - recommended by Cook Inlet Pipeline Co; and

January 19, 1989

3. Boundary adjustments and provisions for maintenance of the gas/oil pipeline - recommended by ADF&G.

The public information effort about Redoubt Bay has concentrated on the local Kenai Peninsula public, and your staff requested a summary of the public process leading to bill reintroduction in the current legislative session (report attached). Because acceptable legislation appears close, in addition to continued Kenai Peninsula involvement, we will make a wider public aware of the situation (preliminary 1989 contact list attached). The legislative process will provide even more public review.

Also attached is a brief Redoubt Bay background "fact sheet". Long-term maintenance of these valuable State lands as productive fish and wildlife habitat and continued established public activities can occur without precluding other land uses. Designation of Redoubt Bay as a Critical Habitat Area would be the public's "insurance policy" that this priority would continue into the future.

We look forward to working with you during this legislative session.

Sincerely,



for
Dan Timm
Regional Supervisor
Division of Wildlife Conservation

Attachments

cc: Rep. Mike Navarre
Rep. C. E. Swackhammer
Sen. John Binkley
Rep. Kay Wallis

Gloria Wisecarver
Chairman
Kenai-Soldotna Advisory Committee

Mark Wilson
Chairman
Cooper Landing Advisory Committee

Tom Mears
Executive Director
Cook Inlet Aquaculture Association

Doug Blossom
Chairman
Central Peninsula Advisory Committee

Jim Hurbert
Chairman
Homer Advisory Committee

Doug Emery
Audubon Society
Kenai Peninsula Chapter

Leon Metz
Kenai Trappers Association

Don Gilman
Mayor
Kenai Peninsula Borough

Harold Mouser
President
Cook Inlet Pipe Line Co.

Alaska Department of Fish and Game
Don Collinsworth
Lew Pamplin
Frank Rue
Jim Faro

REDOUBT BAY CRITICAL HABITAT LEGISLATION
Background, History of Public Involvement and Current Status
January 19, 1989

Redoubt Bay on the west side of Cook Inlet has extensive coastal marsh providing important fish and wildlife habitat and supporting many public uses. Approximately 183,640 acres of the State owned, poorly drained wet lands and waterways are proposed for Critical Habitat designation. The two private parcels, totalling less than 10 acres, would not be regulated by the act and the owners would be assured access to their lands.

The intent of the legislation is to establish dual management priorities of continued fish and wildlife production and continued guaranteed public use of the entire area. The bill would not deny new development or land uses that were compatible with or could be accomplished in a non-detrimental manner to these priorities.

Big game, waterfowl, furbearers, salmon, and trout in this area are taken primarily by Alaskan residents for commercial and recreational purposes. Of national significance, is the nesting by Tule White-front Goose, a scarce subspecies that has been considered for endangered species classification. These fish and wildlife resources prompted ADF&G's request to classify Redoubt Bay a State Refuge in 1978 and 1981.

House Bill 66 met strong opposition in 1981 during the February 28, Soldotna legislative hearing. The public generally agreed with ADF&G's resource evaluation, but opposed establishing the refuge for other reasons: (1) following ANILCA, they were against placing more Alaskan land in special management areas; (2) bureaucrats were not trusted to manage the area; (3) tensions over the future of "trespass cabins" on State land were high and cabin owners opposed anything that could result in loss of cabins at Redoubt Bay or elsewhere; and (4) As the area was essentially wilderness, few could then accept the need for habitat protection as no agent for change was evident.

Since then, ADF&G has worked to inform the public about important resources of the area, identify public uses and concerns, and to promote the understanding that the character of the area could be changed without protection. For example, gas and oil development, land disposals (Cannery Creek 1985), mining, fishery enhancement, and sport fishing lodges could be beneficial or negative depending on a person's perspective and how the activities were accomplished. If the public desires to maintain fish and wildlife populations, habitat, and public uses of the area, long term guidelines for State management needs to be in place.

Renewed efforts to obtain support for a "Redoubt Bay Refuge" began by talking with the cabin owners, commercial fishermen and sportsmen. Based on this information, discussion of future management of State lands in Redoubt Bay occurred with the local Fish and Game Advisory Committees. These public meetings furthered the information exchange between committee members, the public in attendance, and ADF&G staff.

Gradually a consensus for a request to the Legislature evolved. That consensus differed from the earlier ADF&G sponsored attempts in three significant ways: (1) A "Critical Habitat Area" designation was preferred to "Refuge" because of the unique status of the Tule Goose and because it lacked the local negative connotation of a Refuge label; (2) to insure public concerns were addressed, the bill would be a public request rather than ADF&G sponsored; and, (3) the bill would specifically address maintaining existing public activities.

Each of the four Kenai Peninsula Fish and Game Advisory Committees voted for a resolution requesting the Alaska Legislature establish the Redoubt Bay Critical Habitat Area. The Cook Inlet Aquaculture Association, the Kenai Peninsula chapter of the Audobon Society, and the Kenai Peninsula Trappers Association also signed the resolution, documenting additional local public support. This request was sent only to the Kenai Peninsula legislators (but inadvertently not to Senator John Binkley and Representative Kay Wallis who's districts also include portions of Redoubt the Redoubt area). In response, Senator Paul Fischer introduced SB 426 in 1988.

Because SB 426 was introduced late, it seemed unlikely it could become law that session. Therefore, the communication effort concentrated on the Kenai Peninsula to insure the local public understood its contents and intent. Copies were distributed locally and some not previously involved became active. The bill received the continuing support of the four Advisory Committees and in March, the Kenai Borough Planning and Zoning Commission voted to support it. As the bill worked its way through the Senate committees, good suggestions and proposed changes have been made as a result of public input.

Following adjournment of the Legislature, work continued on drafting an acceptable Redoubt bill. The present request is supported by ADF&G and others, but is sponsored by seven Kenai Peninsula groups directly involved with local fish and wildlife. (A copy of their 1988 resolution for legislative actions is attached). The Kenai Peninsula Borough Planning and Zoning Commission recommended a citizens advisory committee be created. Cook Inlet Pipe Line Co., working with ADF&G, suggested sections to insure continued maintenance of their pipe line. ADF&G has suggested boundary adjustments and pipeline maintenance provisions. The legislative process this session will provide additional public, private, and agency review of these and other recommendations and allow modification as necessary.

Redoubt Bay legislation has evolved significantly since 1981. The elements of a bill that would protect and maintain the fish and wildlife values (the resources, habitat, and established public uses) seem to be in place. Some opposition still exists, but the present approach with the citizen's advisory committee is acceptable to many former opponents. The bottom line is the public's desire to continue using the area as they have in the past. Without a formal management priority, the fish and wildlife values of the area could be lost piece meal, because of conflicting land uses. The designation of Redoubt Bay as Critical Habitat gives that priority. The nesting habitat of the Tule Goose will be protected and current public uses of the area will be preserved.

Special 1988 Alaska Fishing Guide

Alaska

The Magazine of Life
on the Last Frontier

April 1988 / \$2.95

Treasures
from
the Sea

Tips on Where and How
to Reel in Rainbows, Kings, Silvers



Case of the Hide-And- -Seek Geese

By Dan Timm and Bob Elgas

Scientists are a lot like detectives. They often spend years tracking clues that may unravel biological mysteries, or searching for "lost treasures" in the plant and animal kingdoms.

One such mystery was recently solved after decades of searching for a type of goose that most waterfowl biologists claimed was non-existent. It is a unique form of white-fronted or "specklebelly" goose—the tule goose.

For more than a century, the tule goose was an enigma, spotted occasionally and then disappearing again. No one knew where it nested, what its migration patterns were, if it really was a distinct subspecies. Then, just a few years ago, the central clue to this "lost treasure" was found in Alaska's Cook Inlet.

In 1852, G. Hartlaub first identified a new subspecies

Right: In the midst of these Alaskan look-alikes is a yellow-collared goose that was banded in California. (ADF&G) Below: Waterfowl biologists and taxonomists spent decades trying to prove that the tule goose, bottom, was a subspecies distinct from the Pacific white-fronted goose. top. (ADF&G)





of geese in Texas. He referred to the common form of "specklebelly" which was abundant throughout the central and western United States, as the Pacific white-fronted goose, *Anser albifrons frontalis*. But he also identified a subspecies—a larger, dark bird known as *A. a. gambelli*. The range of the questioned subspecies was expanded in 1917, when it also was noted in California.

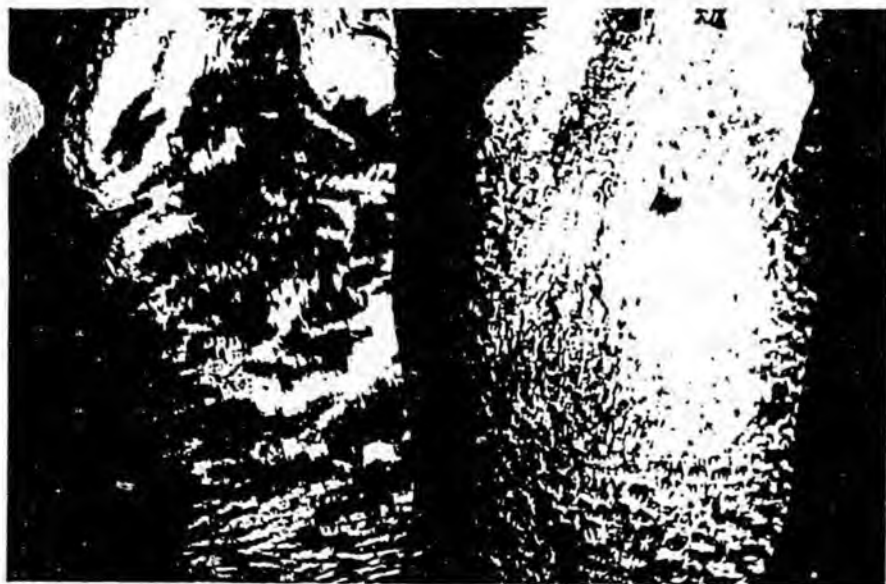
In the early 1900s, a biologist named James Moffitt became interested in the birds and recorded information supporting the idea that the large geese were indeed a distinct subspecies. Most of Moffitt's descriptions were from birds taken in California, and for about 40 years after his death, little more was recorded about tule geese.

In the following decades, the tule goose became almost a myth—a bird of mystery—until most ornithologists and waterfowl biologists denied its existence.

But unlike some questioned species, which disappeared before their existence could be scientifically proven, tule geese were sighted just often enough to keep the controversy alive. On occasion, one would come to the attention of a qualified observer, but usually it was dismissed as an oddity among a flock of "normal" Pacific whitefronts.

A Fresh Pair of Eyes

In 1960, Bob Elgas entered the search for the elusive tule goose. He was familiar with large, dark whitefronts that occasionally were seen during migration in western Saskatchewan, and presumed they were tule geese. His interest picked up after he acquired a storm-injured bird that had been captured by Oregon biologists. That bird launched his search, which lasted nearly two decades and took him to much of



Above, left: Studies of collared geese documented three birds that migrated from northern California to Redoubt Bay—more than 1,900 miles—in four days. (ADF&G) Top: Nests are built as early in May as ice and snow melt allows. (ADF&G) Middle: Young white-fronted geese sport a white belly, and as they age to adulthood, the feathers grow in black splotches. (ADF&G) Bottom: Dick Sellers, a biologist with the Alaska Department of Fish and Game, records every inch of a captive tule goose. (ADF&G)

Arctic Canada and Alaska.

Validating the tule goose as a distinct subspecies depended in large part upon finding a geographically isolated nesting area—separate from other whitefronts. Elgas believed they nested on the Mackenzie River Delta of Canada's Northwest Territories. In 1964, he and another aviculturist searched for the breeding grounds and found large, dark whitefronts in the Old Crow Flats of Yukon Territory. They kept some birds, and banded and released about 50 more. Those in captivity were examined by a U.S. Fish and Wildlife Service ornithologist, who believed these were the tules described more than 100 years earlier in Texas.

The mystery was not neatly tied up, however. A Canadian biologist reported the discovery of large, dark whitefronts breeding far east of Old Crow Flats. To complicate things, Hartlaub's Texas specimens had long since disappeared, and some wondered if he had used the French inch or the English inch to take measurements. Use of the French Inch would make them appear larger by modern standards. Plus, the birds that Elgas banded at Old Crow Flats added to the confusion by wintering in Texas and northeastern Mexico, not California as expected.

Where then were the California tule geese that Moffitt described so well?

A Goose of a Different Color

The geese of Old Crow Flats were large and dark, but they did not approach the large size and dark brown color of the birds in California, so Elgas decided to study the birds there. He reached an agreement with the U.S. Fish and Wildlife Service in 1970 to study tule geese on a refuge adjacent to Moffitt's old study area, about 45 miles northwest of Sacramento.

Most of his observations were in early winter, and he concluded that the birds' behavior, habitat use, and color and size differences made them distinct from the much more abundant Pacific whitefronts. Little mixing of the races occurred. Even their voices were different.

Whitefronts are very secretive. Even hundreds of birds can effectively hide from the most eagle-eyed biologist, and they're difficult to catch. Finally, in November 1972, the first geese were obtained. By 1975, an evaluation of these birds, along with Elgas' field observations, led Dr. Dillion Ripley of the Smithsonian Institute and Dr. Jean Delacour of the American Museum, to describe the California birds as *A. a. elgasi*—in honor of Bob Elgas. They

suggested the elusive Texas race remain classified as *gambelli*.

A Missing Puzzle Piece

If tule geese were to be acknowledged as a subspecies, there was one more vital piece of the puzzle to find. There had to be proof that these geese bred in geographic isolation.

With that in mind, the U.S. Fish and Wildlife Service spent six years in an extensive search of most known white-fronted goose nesting and molting areas in Alaska. Thousands of birds were measured, weighed and banded between 1967 and 1973.

In 1974, radio telemetry was added to the tools used to unravel the goose mystery. Bob Elgas, with a team of two federal biologists and an aviculturist, affixed radio transmitters to seven tule geese in California. For scores of hours, one man listened for radio signals while flying across Alaska; two others chartered

Was there still someplace in Alaska so remote to escape all attention?

a private plane to Alaska for more searching. Despite their efforts, the tule goose nesting ground remained undiscovered.

Curiosity Peaks

Interest in tule geese continued to grow, and from 1976 to 1978, Dan Connelly conducted a master's degree-level study in California. He captured more birds and placed plastic neck collars on some; radios on others. A \$500 reward was offered for neck collar observations in Alaska and Canada. There were no sightings of collared birds, but a private citizen along the British Columbia coast found a dead bird equipped with a radio. The find indicated that Alaska was the likely nesting area.

Meanwhile, the knowledge of tule geese in California was expanding rapidly. In 1978, Mike Wege began a four-year doctoral study of the birds' wintering ecology. Wege collared 200 tules and observed the marked birds. His work resulted in a comprehensive analysis of their use areas, behavior, population size, feeding habits, migration patterns in California and other factors. But where was the nesting ground? Was there still someplace in Alaska so remote to escape all attention?

Summer Place

In August 1978, the Alaska De-

partment of Fish and Game entered the search for the summer nesting area. Dick Sellers and Dan Timm accidentally discovered some tule geese while studying the whitefronts on Susitna Flats in Cook Inlet, within sight of Anchorage. A month later, Timm shot a whitefront on Susitna Flats and discovered its measurements and color were identical to the tules in California. This bird was a clue that focused the nesting-ground search.

Timm had counted hundreds of whitefronts in Redoubt Bay many times during the 1970s, but he thought they were the common Pacific whitefronts. An examination of the geese in Redoubt Bay was clearly warranted.

In July 1979, Warren Hancock, Elgas and Timm joined forces and concluded that the birds in Redoubt Bay were actually tule geese. They found the nesting whitefronts in Cook Inlet geographically isolated from other Alaskan nesting populations.

However, a critical link between Redoubt Bay and California was yet to be made. Without that link, it could be argued that they were not the same birds. Like in a court of law, reasonable doubt could not exist before a tule verdict could be rendered.

During an intensive study from 1980 to 1983, ADF&G and other biologists captured tule geese in Cook Inlet and weighed, measured and marked each one with individually recognizable plastic neck collars. A few carried radio transmitters. In time, all reasonable doubt vanished when these birds reappeared in California, and most of the California birds which Mike Wege had marked were found in Redoubt Bay. These sightings, plus studies in behavior, size and other differences, finally verified Elgas' long belief: The tule goose is no myth.

Where Did They Go?

Much has been learned about tule geese in all these years of study, but many questions remain.

The birds' migration route has been determined from neck-collar sightings and recoveries by hunters. In the fall, they migrate along the Gulf Coast to the Puget Sound area, where they go inland and south to the Summer Lake and Klamath Falls, Ore., area. They then proceed to the central Sacramento Valley, where many overwinter, but some fly farther south and winter in the San Francisco Bay area, and on Grizzly Island State Management Area. But questions keep nagging: What about the large birds that were

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Hide-and-Seek Geese

Continued from page 35

first described in Texas 134 years ago? Were they from Alaska, not Canada, as long suspected?

Another perplexing situation for waterfowl managers has to do with the birds' population. At most, only 1,537 tules have been counted during summers in Cook Inlet—about a third of the known numbers. Although the birds are very difficult to find, it seems unlikely that the entire population summers in upper Cook Inlet. However, searches in other areas of Cook Inlet and Alaska have proven fruitless, and band recoveries and neck-collar sightings all point to upper Cook Inlet as the sole nesting area. Is there another "lost treasure" out there?

Finally, waterfowl biologists question how the tule geese will fit into future land management decisions in a region that's rich in oil, gas, coal, timber and other resources. Most of Alaska's residents also live on Cook Inlet, so it is the focus of much demand for development and settlement.

Cook Inlet has Alaska's largest producing natural gas field and the state's second-largest producing oil field. Until 1986, Redoubt Bay was excluded from additional oil and lease sales, primarily because of the tule goose. A recent sale, however, included careful exploratory guidelines.

White-fronted geese are, by nature, secretive birds and are susceptible to disturbance. Cumulative effects of land development and increased human activity on Cook Inlet's west side could seriously affect population size. ADF&G is encouraging the Alaska Legislature to designate Redoubt Bay a "critical habitat," which would ensure that wildlife and fisheries values are given first consideration in any land management decision.

If managing agencies and developmental interests remain sensitive to the birds and their needs, the future status of the hide-and-see geese will remain secure for many years to come. ☆

Dan Timm was the waterfowl project leader for the Alaska Department of Fish and Game from 1971 to 1982. He has since been the Game Division's southcentral regional management coordinator and is now the division's regional supervisor in Anchorage.

Bob Elgas is a retired rancher living in Big Timber, Mont. He has researched propagation of waterfowl for more than 30 years, is widely known as a wildlife artist, and serves as president of the International Waterfowl Wild Association. He recently was named president emeritus of that organization.

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