

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7194 HOUSE RESOURCES

land law. Around the turn of the century, there was a major change in federal land policy. The traditional practice of federal land disposal to encourage development and western migration was abandoned, and a new policy of federal land retention was instituted. To compensate the states for this continued federal ownership, which in many cases precludes economic development and in all cases precludes state and local taxation, Congress dedicated 90 percent of the mineral leasing revenues from those lands to the states.

During Congressional consideration of statehood for Alaska, considerable attention was given to the distribution of mineral leasing revenues from federal lands in Alaska. The result of those lengthy deliberations was that the revenue distribution provisions of the Mineral Leasing Act of 1920 were expressly incorporated into the Alaska Statehood Act.

The provisions of a statehood act admitting a new state to the Union constitute a compact -- a legally enforceable contract -- between the citizens of the new state and the United States. Such a compact does not impose obligations only on one of the parties; instead, obligations are imposed on both the new state and the United States. The specific terms of such a compact are obligatory and subsequently cannot be unilaterally amended by either party. As the United States Supreme Court once noted with respect to the Act admitting Wisconsin to the Union, a statehood act provision is "an unalterable condition of the admission, obligatory upon the United States." Beecher v. Wetherby, 95 U.S. (5 Otto) 517, ___ (1877).

Congress incorporated the Mineral Leasing Act of 1920 into the compact under which Alaska was admitted to the Union in section 28(b) of the Alaska Statehood Act. In part, this undoubtedly was no more than Congressional recognition of the long-standing policy, applicable to virtually all of the western states, of dedicating 90 percent of the proceeds of public lands to the states in which the lands are located -- i.e., the historic compromise adopted in 1920.

At the same time, however, the legislative history of the Alaska Statehood Act makes clear that Congressional incorporation of the Mineral Leasing Act in the statehood compact also was Congress' way of partially compensating Alaska for the substantial amount of federal land which had been withdrawn and reserved by the federal government for various purposes, and the attendant loss of economic productivity caused by those withdrawals and reservation. Ironically, a number of those withdrawals and reservations were for wildlife refuges, the specific federal lands for which S. 735 seeks to change the revenue distribution formula.

To fully appreciate Congress' incorporation of the Mineral Leasing Act's 90 percent entitlement for Alaska in the statehood compact under which Alaska was admitted, one must look at the facts confronted by Congress at that time. A significant concern during the deliberations on Alaska statehood was whether the Alaska economy was sufficient to support a new state and the essential government services which the new state would have to provide. Much of that concern was a result of the fact that more

than 99 percent of all the land in Alaska was owned by the federal government. Little or no development had taken place because of federal land management practices, and federal land therefore was not contributing to the economic development of the territory. In addition, because it was federally owned, it would be exempt from any taxes which might be levied by a new state government.

To ensure that the new State of Alaska would have sufficient economic resources to meet the necessary expenses of state government, Congress included a substantial land grant in the Alaska Statehood Act. In doing so, however, Congress discovered that more than one-fourth of the land in Alaska -- more than 95 million acres -- was included in federal withdrawals and reservations, several of which were wildlife refuges. Those withdrawn and reserved lands appeared to include most of the valuable resources in Alaska.

As a partial remedy to this situation, which one committee report characterized as "the problem of federal reservations," Congress consciously granted Alaska 90 percent of the oil and gas leasing revenues from federal lands in Alaska. Characterizing this as one of the "major provisions" of the Alaska Statehood Act, Congress concluded that this would minimize the adverse impact of federal withdrawals on the new state's economic viability and would ensure that the new state would benefit from any development of the substantial resources which might be found within those federal withdrawals.

Attached to the printed text of my testimony are a number of excerpts from the legislative history of the Alaska Statehood Act which demonstrate that both supporters and opponents of Alaska Statehood were well aware that Congress was including, as part of Alaska's statehood compact, an entitlement to 90 percent of all oil and gas lease revenues from federal lands in Alaska in perpetuity. While it would serve no purpose to go over all of them in detail, a few examples illustrate the broader Congressional understanding.

Senator Barrett of Wyoming, a supporter of statehood for Alaska, authored the language of what became section 28(b) of the Alaska Statehood Act, the section that incorporates the Mineral Leasing Act into the statehood compact. During a Senate hearing on statehood for Alaska, he remarked: "So I think it would be eminently fair and just and right and proper, when we write this bill up, that we . . . let the Federal Government retain the title to the minerals except such public lands as are granted to you, but give the Territory now and the State of Alaska-to-be ninety percent of the income from the minerals under the Leasing Act royalties that come in from now on out." Later in the hearing, he introduced the language that now appears as section 28(b) of the Alaska Statehood Act with the words: "I propose to insert a new section 21 on the last page of the bill and provide in here that 90 percent of the income from coal and 90 percent of the income from the leasing act minerals shall go to the new State of Alaska." He noted that the Secretary of

Interior had suggested such a provision be included in the statehood bill.

Representative Dawson of Utah, also a supporter of statehood for Alaska, commented on the House floor that "[t]hese [revenue sharing] provisions are the foundation upon which Alaska can and will build to the enormous benefit of the national economy shared by her sister States."

Senator Talmadge of Georgia, an opponent of statehood, noted during the Senate floor debate that the Statehood Act land grant and the various revenue sharing measures, specifically including the entitlement to 90 percent of oil and gas leasing revenues, "have been referred to variously as a 'dowry' and 'the greatest giveaway of natural resources in the history of this country.'"

Finally, and perhaps most significantly, Senator Butler of Maryland, a statehood opponent, reminded his Senate colleagues that grants made in statehood legislation are irrevocable and cannot be changed by a subsequent Congress:

A bill which grants statehood is not some minor piece of legislation, but is a major function of the national legislature. We cannot undertake to perform that function without reminding ourselves that we are asked to make a grant which cannot be revoked. We cannot, therefore, consider these bills as we would ordinary legislation in the sense that ordinary legislation may be amended or changed in subsequent years as experience dictates.

When placed in its proper historical perspective, it is not surprising that Congress included an entitlement to 90 percent of the proceeds from federal oil and gas leasing in the

Alaska Statehood Act. The Mineral Leasing Act, and its revenue distribution formula under which 90 percent of the revenues from federal lands are dedicated to the states in which the lands are located, represents a historic trade-off in the development of public land law. In enacting it, Congress terminated its traditional policy of disposing of the public lands. Instead, it determined that the federal government should retain those public lands, but should dedicate most of the mineral revenues from those lands to the benefit of the states in which the lands are located.

Virtually all of the public land states were admitted to the Union prior to the enactment of the Mineral Leasing Act, and its dedication of 90 percent of public land revenues to the states, in 1920. As a result, the statehood acts admitting those states do not include a provision similar to the one incorporated in the Alaska Statehood Act. However, incorporation of the Mineral Leasing Act in the Alaska Statehood Act simply reflects the Congressional understanding that the Mineral Leasing Act indeed was a historic compromise and, as a result of that compromise, the public land states are to receive the benefit of 90 percent of the revenues from federal lands within their borders in return for the continued federal ownership and management of those lands.

Passage of this bill would significantly alter one of the carefully considered terms and conditions under which Alaska was admitted to the Union. It would be an impermissible unilateral attempt to amend the solemn compact between the national

government and the citizens of Alaska. Alaska has not agreed to this modification of the compact between Alaska and the United States and, without such agreement, it would have no force or effect.

It also would signal a marked departure from the historic compromise, under which Congress dedicated 90 percent of the proceeds of the public lands to the states in return for continued federal ownership, which has guided federal public land policy throughout the United States for more than six decades.

Alaska supports the goals of the Land and Water Conservation Fund. At the same time, the state is concerned that such a laudable goal not be accomplished at the cost of a fundamental change in the provisions of the solemn compact under which Alaska entered the Union and the historic compromise which has guided federal public land policy for more than two generations.

Thank you very much for the opportunity to testify on this bill. We hope that we can work constructively with this subcommittee and the Congress to improve the effectiveness of the Land and Water Conservation Fund without sacrificing Alaska's statehood birthright and more than sixty years of federal public land policy. Again, thank you very much.

ALASKA STATEHOOD ACT LEGISLATIVE HISTORY;
CONGRESSIONAL INCORPORATION OF MINERAL LEASING
ACT 90% REVENUE SHARING FORMULA IN
ALASKA STATEHOOD COMPACT

1. During Senate hearings on Alaska Statehood, one senator explained that he thought the new State of Alaska should get all of the lands within its boundaries but, because that probably was not possible, the Statehood Act should include a grant of 90 percent of Mineral Leasing Act revenues "from now on out."

Senator BARRETT. . . .

. . . .

So I think it would be eminently fair and just and right and proper, when we write this bill up, that we provide here that the [Mineral] Leasing Act of 1920, as amended, and let them retain title to the lands up there, except that which is granted -- personally I hate to see that done, but to be realistic we probably have to do that -- let the Federal Government retain the title to the minerals except such public lands as are granted to you, but give the Territory now and the State of Alaska-to-be ninety percent of the income from the minerals under the Leasing Act royalties that come in from now on out.

Hearings on S. 49 and S. 35 before the Senate Committee on Interior and Insular Affairs, 85th Cong., 1st Sess. 30-31 (1957).

2. Later in those hearings, the same senator offered an amendment to the proposed statehood legislation under consideration which would provide that "90 percent of the income from the leasing act minerals shall go to the new State of Alaska," noting that the Secretary of Interior supported a bill under consideration in the House of Representatives which would do precisely that but "suggested that the statehood bill was the proper place to insert such a provision." The language of the proposed amendment is identical to the language of what ultimately was enacted as section 28(b) of the Alaska Statehood Act. Both the author of the proposed amendment and one of his colleagues hoped that giving Alaska a 90 percent entitlement might ultimately result in their states getting the same thing. Whether that would result or not, however, they agreed that Alaska should receive such an entitlement as part of its statehood act.

Senator ANDERSON. . . . As far as I am concerned, I hope you [Alaska's non-voting Delegate Bartlett] would agree with me that what we tried to do was to make it possible for Alaska to come

in as a State and live self-respectingly among the States.

We did not strip her of every dollar she could get, but tried to give her all the money to make Alaska a good and fine progressive State. I believe the bill does that.

. . .

Senator BARRETT. . . . I am offering an amendment here for the consideration of the committee. I think this is probably as good a time as any to do it.

I discussed this amendment this morning when you were absent, Senator Anderson. I propose to insert a new section 21 on the last page of the bill and provide in here that 90 percent of the income from coal and 90 percent of the income from the leasing act minerals shall go to the new State of Alaska.

When I mentioned that this morning, Delegate Bartlett told me that the House committee had considered a bill doing precisely that and had reported it out favorably. Since then I have looked up the record and I find that the Secretary of the Interior has filed a favorable report on the bill and agreed that it should be enacted into law but suggested that the statehood bill was the proper place to insert such a provision.

Maybe it would be well to have in these hearings a copy of the report that the Secretary of the Interior made on the House bill.

Senator JACKSON. Without objection, the report and the amendment of the Senator from Wyoming will be included in the record at this point, if that is agreeable. The report and the amendment should go together.

(The documents referred to are as follows:)

BARRETT AMENDMENT TO S. 49

Sec. 22. . . .

(b) Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, as amended (30 U.S.C. 191) is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ",and of those from Alaska 52 1/2 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof".

[Secretary of Interior's Report]

DEAR MR. ENGLE [Chairman of the House Committee on Interior and Insular Affairs]: This is in reply to your request for the views of this Department on H. R. 3477, a bill relating to moneys received from mineral lands in Alaska.

We recommend that H. R. 3477 be enacted. We believe, however, that the subject matter of the bill would be more appropriately covered in statehood legislation.

. . .

Senator ANDERSON. Do you not think Senator Barrett, that supplements the statement I made, that whatever makes it possible for the State to exist is a good bill?

I think Senator Barrett should be commended for that proposal. I think there are some other States that the proposal could be applicable to but we may get our rights some time if Alaska does.

Senator JACKSON. That may be a good precedent for the other 11 Western States.

Senator ANDERSON. It happens that Wyoming and New Mexico are the 2 principal contributors to the Federal Treasury on this particular section, \$100 million in Wyoming and \$130 million or \$140 million in New Mexico which we could have used very nicely in our State.

Senator JACKSON. We may have some problems with the other 37 States on this issue.

Senator BARRETT. I do not think so, particularly. I think we would be remiss a bit if we did not include it here, particularly since the Bureau of the Budget and the Secretary of the Interior and everyone interested has approved this.

Hearings on S. 49 and S. 35 before the Senate Interior and Insular Affairs Committee, 85th Cong., 1st Sess. 66-67 (1957).

3. A House committee report, in a section entitled "The Problem of Federal Reservations," noted that a partial solution to the depressing effect of federal withdrawals on the economic viability of a new Alaska state government would be to specify that the act of admission would grant Alaska 52 1/2 percent of Mineral Leasing Act revenues. This would be in addition to the 37 1/2 percent that all other public land states receive because, while those states were covered by the Reclamation Act, Alaska would not be.

As previously noted, tremendous acreages of land in Alaska have been tied up in the status of Federal reservations and withdrawals for various purposes. The committee feels strongly that this practice has been carried to extreme lengths in Alaska, to a point which has hampered the development of such resources for the benefit of mankind. As a result, a long list of potential basic industries in the territory, including the forest industry, hydroelectric power, oil and gas, coal, various other minerals, and the tourist industry, can exist in Alaska only as tenants of the Federal Government, and on the sufferance of the various Federal agencies. The committee considers that to be an unhealthy situation.

The failure of these industries to grow under such a restrictive policy is a proof of its unwisdom. The committee feels that this policy must be changed if statehood for Alaska is to be a success.

In its approach to the statehood issue, the committee has attempted to make a start toward such a change by various specific provisions in the bill. . . .

A second provision in section 28 amends the Mineral Leasing Act of 1920, as amended, by granting 52 1/2 percent per annum of the net proceeds realized from coal, phosphates, oil, oil shale, and sodium on the public domain in Alaska shall be paid to the State of Alaska for disposition by the legislature thereof.

The payment of these proceeds is recommended in return for Alaska not being covered by the Reclamation Act of 1902, as amended. The Reclamation Act provides that in the 17 Western States 52 1/2 percent of the oil- and gas-lease revenues goes into the reclamation fund; 37 1/2 percent is returned to the respective States, and the remaining 10 percent is retained by the Federal Government for administration purposes.

H.R. Rep. No. 624, 85th Cong., 1st Sess. 7-8 (1957).

4. The same point is reiterated in the sectional analysis.

Subsection [28](b) amends the act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain approved February 25, 1920, by providing that 52 1/2 percent of the proceeds received therefrom shall be covered into the State treasury for disposition by the State legislature.

The payment of these proceeds is recommended in return for Alaska not being covered by the Reclamation Act of 1902, as amended. The Reclamation Act provides that 52 1/2 percent of the oil and gas revenues goes into the reclamation fund; 37 1/2 percent is returned to the respective States and the remaining 10 percent is retained by the Federal Government for administration purposes.

Id. at 23.

5. A Senate Report made Alaska's entitlement to 90 percent of federal oil and gas leasing revenues even clearer.

Some of the additional costs connected with statehood will be met by granting the State a reasonable return from Federal exploitation of

resources within the new State. In the past the United States has controlled the lion's share of such resources and, in some instances, retained the lion's share of the proceeds. This situation, though it has not proved conducive to development of the Alaskan economy, may have been proper at times when the United States paid a large part of the expense of governing the Territory. However, the committee deems it only fair that when the State relieves the United States of most of its expense burden, the State should receive a realistic portion of the proceeds from resources within its borders. The divisions of proceeds established in the bill are determined by comparisons with other States and consideration of the geographic facts which apply to Alaska.

. . .

Section 22 of the bill extends to the State the provisions of Public Law 88, 85th Congress, which was approved July 10 of this year. Under this new law the Territory receives a total of 90 percent of the profits from government coal mines and 90 percent of the profits from operations under the Mineral Leasing Act. Prior to the 1957 law, Alaska received none of the proceeds from government coal mines and 37 1/2 percent of the proceeds from mineral leasing operations. Without section 22 in the bill, the new State would not be within the purview of the 1957 act.

5. Rep. 1163, 85th Cong., 1st Sess. 3 (1957).

6. During the floor debate on Alaska statehood in the House of Representatives, one congressman outlined the relationship between the extensive federal withdrawals and the entitlement to 90 percent of all mineral leasing revenues which, in addition to the land grant, would form the "foundation" of Alaska's entry into the Union.

Mr. DAWSON of Utah. . . .

Further, over 92-million acres -- both in and out of the defense area -- already have been withdrawn by the Federal Government, and these include much of the most valuable resources. They include, for example, nearly 21-million acres of the

best forest lands and nearly 49-million acres of oil and gas reserves.

. . .

As to that lion's share of lands which would remain under Federal control, Alaska would receive -- for the support of its public schools -- 5 percent of the net proceeds from the sale of any land by the Federal Government.

Additionally, Alaska would receive 90 percent of the proceeds from the operation of Government coal mines and from the production of coal, phosphates, oil, oil shale, and sodium from the public domain. Reflecting Alaska's exclusion from the Reclamation Act of 1902, these are the same provisions which this Congress approved -- by consent -- for the Territory of Alaska last year in Public Law 85-88.

. . .

These provisions are the foundation upon which Alaska can and will build to the enormous benefit of the national economy shared by her sister States. We cannot make Alaska a "full and equal" State in name and then deny her the wherewithal to realize that status in fact.

85 Cong. Rec. 9360-9361 (1958).

7. During the floor debate in the Senate, an opponent of statehood for Alaska argued that the sharing of mineral revenues with the new State of Alaska, as a means to "alleviate" the adverse effect of continued federal control of significant acreage and resources, would result in Alaska being too dependent on those federal revenues.

Mr. ROBERTSON. . . .

The uniqueness of the Alaska land situation is further emphasized in the committee report, which points out that on the occasion of admission of existing States land grants amounted to a maximum of 6 to 11 percent of the total land area, and much acreage already had passed into private taxpaying ownership, whereas in Alaska, even after

a grant of unprecedented proportions to the proposed State, the Federal Government would continue to control more than two-thirds of the total acreage and an even larger percentage of the resources.

To alleviate this situation to some extent, the bill proposes to share with the State profits from Government coal mines, mineral leases, and the fur monopoly, which, of course, would make the State government a pensioner dependent on the Central Government to a much greater extent than the existing States which already, in my opinion, have jeopardized their constitutional rights by too ready acceptance of Federal handouts for a variety of public works and welfare programs.

85 Cong. Rec. 12020 (1958).

8. A supporter of Alaska statehood introduced a Department of Interior memorandum outlining the "new sources of revenue available to Alaska," one of which was listed as "oil and gas leases (90 percent to the State)." Another supporter then pointed out that oil had just been discovered in Alaska, and that discovery "will have a tremendous impact on the ability of the new State to provide the essential resources to support itself."

Mr. CHURCH. . . .

Mr. President, I wonder if the Senator from Florida will permit me to offer at this point in his address a memorandum which I have received from the Department of the Interior, which is directed to the very subject on which the Senator is now elaborating, namely, the capacity of Alaska to support statehood.

We have heard in the course of this debate many exaggerated statements about how statehood would impose an impossible burden upon the undeveloped economy of Alaska. If one were to listen uncritically to such statements, one might be led to conclude that statehood would drive the Alaskan economy into insolvency and bring ruin upon the people there.

I think this memorandum effectively gives a rebuttal to that argument, in that it shows

precisely what the additional costs for statehood would be, and what the additional income to the newly formed State government would be, by virtue of the provisions contained in the pending bill.

. . .

The PRESIDING OFFICER. Without objection, the memorandum referred to by the Senator from Idaho will be printed in the Record.

The memorandum is as follows:

. . .

New Revenues Available to Alaska

Oil and gas leases (90 percent
to the State).....\$3,000,000

. . .

Mr. JACKSON. . . .

I should like to point out one further consideration in connection with the financial ability of the proposed new State to take care of its responsibilities. Just 11 months ago we witnessed the first oil strike of any substance in Alaska. A little more than a year ago about 5 million acres were under lease, or applications were pending with respect thereto. The most recent check, in May, showed 32 million acres covered by oil leases or lease applications.

The program involves all the major oil companies and numerous independent oil companies. We have been advised in the Committee on Interior and Insular Affairs, where some of the legislation on this subject is handled, that the signs are most hopeful for a tremendous oil development in the area which will become a State.

I add that one point because it will have a tremendous impact on the ability of the new State to provide the essential resources to support itself. This is a factor not indicated in the

Secretary's analysis of the ability of the new State to do the job.

85 Cong. Rec. 12207-12208 (1958).

9. An opponent of statehood again pointed to the 90 percent entitlement in the statehood bill as evidence of the "prevailing doubt" regarding the ability of the new state to support itself.

Mr. TALMADGE. . . .

The prevailing doubt of Alaska's ability to support itself is evidenced by the generous special considerations which are made for it in this statehood act.

. . .

In addition [to a large land grant], it would be granted:

. . .

Ninety percent of the profits from Government coal mines and operations under the Mineral Leasing Act, of which 37 1/2 percent of the latter would be earmarked for roads and schools.

. . .

These considerations have been referred to variously as a "dowry" and "the greatest giveaway of natural resources in the history of this country."

85 Cong. Rec. 12297 (1957).

10. Finally, the permanent and irrevocable nature of the granting of statehood was described.

Mr. BUTLER. . . .

Despite all its complex features, the primary purpose of the bill is to grant statehood. A bill which grants statehood is not some minor piece of legislation, but is a major function of the national legislature. We cannot undertake to

perform that function without reminding ourselves that we are asked to make a grant which may not be revoked. We cannot, therefore, consider these bills as we would ordinary legislation in the sense that ordinary legislation may be amended or changed in subsequent years as experience dictates. . . .

. . . .

My research has also developed that there is contained in the bill provisions which have the effect of giving away more revenue and more property than has ever been given to any State in its enabling act.

85 Cong. Rec. 12316-12317 (1958).

MEMORANDUM

State of Alaska

TO: Honorable Bill Sheffield
Governor
State of Alaska

DATE: April 28, 1986

Harold M. Brown
Attorney General

FILE NO: 663-86-0339

TELEPHONE NO: 465-3600

FROM: G. Thomas Koester *GTK*

By: Assistant Attorney General
Department of Law

SUBJECT: ANWR issues -- Federal 90 percent revenue sharing

As part of an overall analysis of potential oil and gas leasing in the Arctic National Wildlife Refuge ("ANWR"), you asked this department to prepare a preliminary analysis of two specific issues: (1) the effect of a possible land trade on the state's 90 percent royalty share of oil and gas production from federal lands in wildlife refuges; and (2) legal arguments which might be raised with respect to possible congressional consideration of a reduction in the state's current 90 percent royalty share.

In brief, we believe (1) a land trade would eliminate the state's 90 percent royalty share of production from the lands traded by the United States to third parties and probably would result in the state receiving no royalty from oil and gas produced on the exchange lands received by the federal government, and (2) there are both legal and policy arguments the state can make against a congressional reduction of the state's royalty share, but we cannot be certain that they would prevail.

I. Background

When the United States issues oil and gas leases for lands within wildlife refuges, distribution of the revenues received by the United States from that leasing depends on whether the refuge lands from which the revenues are derived are acquired lands or reserved public domain lands. "[A]cquired lands are those granted or sold to the United States by a State or citizen and public domain lands were usually never in state or private ownership." Wallis v. Pan American Petroleum Corp., 384 U.S. 63, 65 n.2 (1966).

Oil and gas leasing on acquired lands is governed by the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 et seq. Under that Act, revenues from oil and gas leases on acquired lands are to be "distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U.S.C. § 355. As applied to wildlife refuges created from acquired lands, this provision requires that oil and gas revenues be distributed according to the formula contained in the Wildlife

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Refuge Revenue Sharing Act, 16 U.S.C. § 715s, which provides that 75 percent of the revenues go to the federal government and 25 percent of the revenues go to the county in which the wildlife refuge is located.

Oil and gas leasing on public domain lands reserved for wildlife refuge purposes, on the other hand, is governed by the Mineral Leasing Act of 1920, 30 U.S.C. §§ 191 et seq. Under that Act, the state is entitled to 90 percent of the revenues from such lands in refuges in Alaska and 10 percent is paid into the United States Treasury. */ See generally Watt v. Alaska, 451 U.S. 259 (1981).

Congress extended the Mineral Leasing Act distribution formula for revenues from public domain lands, including reserved public domain lands in wildlife refuges, to Alaska in section 28(b) of the Alaska Statehood Act. Congress considered this one of the "major provisions" of the Act. H.R. Rep. No. 624, 85th Cong., 1st Sess. 3 (June 25, 1957) ("House Report"). Congress did so, in large part, because so much of Alaska was "tied up in the status of Federal reservations and withdrawals for various purposes," stating that this "practice has been carried to extreme lengths in Alaska." House Report at 7. One result of that "unhealthy situation," id. at 8, is that substantial mineral leasing revenues in Alaska are derived from public lands in federal withdrawals and reservations, including wildlife refuges, a situation unique to Alaska. See Watt, 451 U.S. at 261, n.1.

The Mineral Leasing Act, and its revenue distribution formula under which 90 percent of the revenues are dedicated to the state, represented a historic tradeoff in the history of public land law. In enacting it, Congress terminated its historic policy of disposing of the public lands. Instead, it determined

*/ States other than Alaska receive only 50 percent of public domain land mineral revenues. However, an additional 40 percent of those revenues are paid into the Reclamation Fund established under the Reclamation Act of 1902. Those funds, in turn, are used to fund reclamation projects in those states. Alaska is not covered by the Reclamation Act and receives no benefits under it. Congress considered it only fair that the additional 40 percent share of public domain land revenues be paid to Alaska "in return for Alaska not being covered by the Reclamation Act of 1902." See H.R. Rep. No. 624 (to accompany H.R. 7999), 85th Cong., 1st Sess. 23 (June 25, 1957).

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that the federal government should retain those public lands remaining in the states, but should use most of the mineral revenues from those lands for the states' benefit. The 90-10 revenue distribution formula in the Mineral Leasing Act "was to compensate for the states' inability to tax the lands to pay for governmental services." Fairfax and Yale, The Financial Interest of Western States in Non-tax Revenues from the Federal Public Lands 19, published by the Western Legislative Conference, Council of State Governments, and the Lincoln Institute of Land Policy (1985).

In contrast, the Wildlife Refuge Revenue Sharing Act, under which 25 percent of certain wildlife refuge revenues are shared with the counties in which the refuges lie, was intended to reduce local opposition to federal acquisition of land for refuge purposes. The revenue sharing formula was intended to compensate localities for the loss of property tax revenue when the federal government acquired the land and, as a result, it was removed from the local tax roles. As a general proposition, this rationale would not fit federal acquisition of large tracts of either state land or undeveloped Native corporation land, neither of which currently are subject to local property taxes. See Alaska Const. art. IX, § 4; 43 U.S.C. § 1620(d).

Nonetheless, the distinction between acquired land in wildlife refuges and public domain land reserved for refuge purposes is central to resolution of the first question you asked us to discuss. The fact that Congress extended the Mineral Leasing Act to Alaska in the Statehood Act bears directly on your second question.

II. The Effect of a Land Trade on the State's 90 Percent Royalty Share

We understand that the Department of the Interior is contemplating certain land trades under which federal lands in ANWR would be exchanged for privately-owned Native corporation lands constituting inholdings in other federal conservation system units in Alaska. If such exchanges take place, and the exchanged ANWR lands are offered for oil and gas leasing, the Native corporations would be the lessors entitled to receive the revenues. The revenues would not be received by the federal government as result of leasing under the Mineral Leasing Act, and those revenues would not be subject to the Mineral Leasing Act's 90-10 distribution formula. Accordingly, there would be no basis for the state to claim any portion of the revenues derived. In other words, land trades would totally eliminate the state's 90 percent royalty share from such ANWR lands.

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In addition, it should be noted that the state would have no right to any federal oil and gas revenues derived from the lands obtained by the United States from the Native corporations. Those lands would be acquired lands, not reserved public domain lands, and the revenue distribution from federal oil and gas leases on those lands would be governed by the Mineral Leasing Act for Acquired Lands. As noted earlier, revenues from oil and gas leasing of acquired lands in wildlife refuges are governed by Wildlife Refuge Revenue Sharing Act, which provides that 25 percent of any such revenues are to go to the county in which the refuge is located and 75 percent to the federal government. None of the revenues go to the state.

The state could argue that this should not be the result. The rationale for the Wildlife Refuge Revenue Sharing Act distribution scheme -- i.e., compensating municipalities for lost property tax receipts -- does not apply to undeveloped Native corporation lands, which are not subject to local property taxes under the Alaska Native Claims Settlement Act (at least until 1991). See 43 U.S.C. § 1620(d). Moreover, the state can argue that the United States cannot eliminate its 90 percent share of revenues from reserved public domain lands by trading them on the ground that doing so would violate the solemn compact memorialized in the Alaska Statehood Act.

However, we believe both arguments probably would be unavailing in court. The first argument appears to be more of a policy argument than a legal argument, more appropriately directed to Congress and not the courts. The second argument would require the court to find that the extension of the Mineral Leasing Act to Alaska also constituted an implied promise not to convey federal lands to third parties, which simply is not supported by the legislative history of section 28(b) of the Statehood Act.

III. Congressional Reduction of the State's 90 Percent Royalty Share

As noted in section I above, Congress extended the Mineral Leasing Act distribution formula for revenues from public domain lands, including reserved public domain lands in wildlife refuges, to Alaska in section 28(b) of the Alaska Statehood Act. Alaska accepted the provisions of the Statehood Act in article XII, section 13, of the Alaska Constitution. Provisions of a Statehood Act become obligatory on the United States upon acceptance of those provisions by the new state. See, e.g., Cooper v. Roberts, 59 U.S. (18 How.) 173 (1856); see generally 1981 Op. Att'y Gen. No. 3, at 3-5 (April 2). Particularly in light of

The Honorable Bill Sheffield
Governor, State of Alaska
663-86-0339

April 28, 1986
Page 5

Congress' characterization of the extension of the Mineral Leasing Act to Alaska as one of the "major provisions" of the Alaska Statehood Act, the state has a very strong argument that continued application of the Mineral Leasing Act's distribution formula to oil and gas leasing revenues from reserved federal public domain lands in ANWR is required as part of Alaska's statehood compact (at least as long as those lands remain federally-owned).

At the same time, we must point out that the United States might successfully argue that Congress has the plenary authority to modify the distribution formula for oil and gas revenues from ANWR. In Watt v. Alaska, Justice Stevens (concurring in the Court's decision that the Mineral Leasing Act's 90-10 distribution formula applied to oil and gas revenues from the Kenai National Moose Range) stated:

The question of how to divide the revenues from oil and gas leases on public lands in the Kenai Peninsula is clearly a matter for Congress to decide. If Congress is displeased with the decisions of this Court and the Court of Appeals [i.e., the decisions that Alaska is entitled to 90 percent of the revenues], it may promptly reverse them by revising the relevant statutes.

451 U.S. at 274. We did not make a statehood compact argument in that case and it was not before the Court. Nonetheless, Justice Stevens' comment undoubtedly will be cited by the United States in the event Congress changes the current 90-10 distribution formula in the Mineral Leasing Act or establishes a different distribution formula specifically for revenues from ANWR.

We hope this responds to your request. If we can provide additional information, please contact us at your convenience.

GTK:dln
cc: John Katz
Office of the Governor
Washington, D.C.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 2, 1981

The Honorable Hugh Malone
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Legality of unilateral
changes to Statehood Act
by United States Congress.
Our file J-66-556-81

Dear Representative Malone:

On February 24, 1981, you requested that we review subsections 906(f)(3) and 906(p) of the Alaska National Interest Lands Conservation Act (hereafter "ANILCA"), Public Law 96-487, 94 Stat. 2371. Those two subsections, as well as subsection 906(a), amend certain provisions in Section 6 of the Alaska Statehood Act, 48 U.S.C. note preceding Section 21. Subsection 906(f)(3) of ANILCA amends Section 6(g) of the Statehood Act to give the Secretary of the Interior discretionary authority to waive the minimum tract selection size set out therein where such a waiver "would be in the national interest and would result in a better land ownership pattern." Subsection 906(p) removes the requirement of Presidential approval of selections north and west of the so-called "PYK line" described in Section 10 of the Statehood Act for lands conveyed to the state by the terms of subsections 906(c), (d) and (g) of ANILCA. Subsection 906(a) extends the time within which the state may

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

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JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 2, 1981

The Honorable Hugh Malone
House of Representatives
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Juneau, Alaska 99811

Re: Legality of unilateral
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Hon. Hugh Malone
Re: J-66-556-81

April 2, 1981
Page 2

make selections under Sections 6(a) and 6(b) from 25 to 35 years.

Your inquiry is whether there are legal grounds for the United States unilaterally to amend the provisions of the Statehood Act. There is no clear legal answer where, as here, the amendments enacted by Congress do not defeat or materially diminish rights conferred on the state by the act of admission but, instead, actually benefit the state (see pp. 6-7, *infra*). What is clear is that the United States cannot unilaterally amend the Statehood Act to the state's detriment without the state's consent or acquiescence. 1/

The state's position has always been that the United States cannot unilaterally amend the Statehood Act. However, the state has avoided a confrontation over the issue by working with Congress to ensure that any post-statehood amendments to the Statehood Act are beneficial to the state and not inimical to its interests.

At the same time, there are indications in decisions of the United States Supreme Court that the United States may

1/ At least two provisions of the Alaska Native Claims Settlement Act -- the Section 9 2% override on royalties due the state and the Section 11(a) withdrawal of state-selected lands for Native village conveyance -- were unilateral amendments to the Statehood Act, albeit by implication, which were detrimental to the state's interest. To ensure prompt resolution of pending Native claims, Governor Egan, on behalf of the state, consented to those amendments and the state did not litigate the issue within the time specified by Section 10 of ANCSA.

Hon. Hugh Malone
Re: J-66-556-81

April 2, 1981
Page 3

unilaterally amend certain provisions in a statehood act. However, such amendments would be effective only if they did not defeat or materially diminish rights conferred on the state by the act of admission.

Summarizing, it is not clear as a matter of law whether the United States may unilaterally amend the Statehood Act or whether some parallel state action is also required. Under either approach, however, the practical effect is that the state's rights under the Statehood Act cannot be diminished without the state's consent.

There can be no question that an act of Congress admitting a new state to the Union constitutes a compact, a legally enforceable contract, between the citizens of the new state and the United States. See Stearns v. Minnesota ex rel. Marr, 179 U.S. 223, 244-245 (1900). Such compacts do not impose obligations only on one of the parties; rather, the obligations are imposed on both the new state and the United States. See the Public Land Law Review Commission's Report to Congress, One-Third of the Nations's Land (1971), at 244. The terms of such compacts constitute the conditions of admission of the new state, obligatory on both the state and the United States ^{2/}, and subsequently

^{2/} This assumes, of course, that the conditions are constitutional. Provisions which purport to limit or qualify the political rights and obligations -- i.e., the sovereignty -- of a state are unconstitutional because enforcing them would result in the state being admitted on a less-than-equal footing than other states. Cf. Coyle v. Smith, 221 U.S. 559 (1911) (a provision in the act admitting Oklahoma to the Union providing that the capital of Oklahoma could not be moved held unenforceable because such decisions, after a state is admitted, are the exclusive province of the state).

"an unalterable condition of the admission,
obligatory upon the United States"

Hon Hugh Malone
Re: J-66-556-81

April 2, 1981
Page 4

cannot be unilaterally amended by either party without the consent or acquiescence of the other. Beecher v. Wetherby, 95 U.S. (5 Otto) 517 (1877). 24 U.S. 490, 491

Provisions regarding grants of federal land generally are considered terms and conditions of a statehood compact and are enforceable both against the state and the United States. For example, in Stearns v. Minnesota ex rel. Marr, supra, the Court held that Congress can convey land to states in trust, and states accepting that land are bound by the terms of the trust, even where this may contravene the state constitution. In Cooper v. Roberts, 59 U.S. (18 How.) 173 (1856), the Court held that a statehood act grant of unspecified lands is binding on the United States and depends only on subsequent identification by survey of the lands granted. The Court also indicated that post-statehood acts of Congress should be construed as recognizing that a compact existed as of the date of statehood, and not as creating subsequent legal impediments to fulfillment of that prior agreement. In Beecher v. Wetherby, supra, the Court held that no post-statehood act of Congress could defeat an appropriation of land made earlier by Congress in a statehood act. The lands at issue in that case were subject to a reservation for the benefit of Indians at the time Wisconsin was admitted to the Union. The Court concluded that a statehood act conveyance from the United States to Wisconsin

Hon. Hugh Malone
Re: J-66-556-81

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was effective as to the fee interest in those lands, although Wisconsin took the lands subject to the Indians' existing right of occupancy as long as that occupancy continued. However, the Court held that a post-statehood Congressional act authorizing the sale of lands occupied by Indians could not affect the title to the lands previously granted to the state. Accordingly, a subsequent United States patent to those lands conveyed no title because title already had vested in the state.

The general rule, then, is that provisions in statehood acts conferring rights on the state are valid and enforceable against the United States, and may not be unilaterally amended by post-statehood federal legislation.

However, this may not mean that no provision in a statehood act may ever be unilaterally amended by Congress. Where such amendments merely amend the procedures which must be followed to transfer title from the United States to the state, and do not materially diminish the rights granted to the state as conditions of its admission, it may be permissible for Congress to amend those provisions unilaterally. In Pollard's Lessee v. Hagar, 44 U.S. (3 How.) 211 (1845), the Court stated that Congress can reserve power over federal public lands in an act admitting a new state, although it need not do so because it possesses that power even in the

Hon. Hugh Malone
Re: J-66-556-81

April 2, 1981
Page 6

absence of such a provision. 3/ Therefore, Congress' exercise of power over federal public lands in a state after admission, standing alone, may not violate the statehood compact unless it defeats or materially diminishes rights conferred on the new state by the act of admission.

The provisions of the Alaska Statehood Act amended by ANILCA all deal with the terms and conditions under which title to lands owned by the United States will pass to the state. Moreover, those amendments benefit the state rather than defeating or materially diminishing any rights the state possesses under the Statehood Act. Section 906(a) extends the time within which the state may make selections under Sections 6(a) and 6(b) of the Statehood Act from 25 years to 35 years. Section 906(f)(3) gives the Secretary of the Interior discretion to waive the minimum tract selection size previously imposed by the Statehood Act. Absent such authority, the state would be required to file selections no smaller than the minimum size specified; under the amendment, if the state decides it wishes to file

3/ The Pollard case is more generally cited for the proposition that Congress cannot reserve power over the lands underlying navigable waters within a new state because, under the equal footing doctrine, new states are vested with title to those lands to the same extent that the original 13 states possessed such a title, and the original 13 states never relinquished such title to the United States.

Hon. Hugh Malone
Re: J-66-556-81

April 2, 1981
Page 7

smaller selections, the Secretary of the Interior is given discretionary authority to accept those selections. Finally, Section 906(p) removes the proviso in Section 6(b) of the Statehood Act regarding presidential approval of state selections north and west of the so-called "PYK line" for prior state selections which now are confirmed to the state under subsections (c), (d) and (g) of Section 906; absent this provision, such approval would be required for all those prior selections.

Although these amendments, on their face, appear to be unilateral action by Congress since no state consent (either through the legislature or the executive) is required, they comprise one of the "seven consensus points" which the state desired in any Alaska lands legislation ultimately passed by Congress. They were initially suggested and drafted by the state, and were actively supported by the state throughout the Congressional deliberations on the bill. Accordingly, the state has maintained that they are bilateral amendments to the Statehood Act and have been concurred in by the state.

Alternatively, the Statehood Act amendments could be viewed as a permissible exercise of Congress' plenary power over the administration of federal lands. Had Congress attempted to diminish any of the State's rights under the Statehood Act, we believe it would have been acting outside

Hon. Hugh Malone
Re: J-66-556-81

April 2, 1981
Page 8

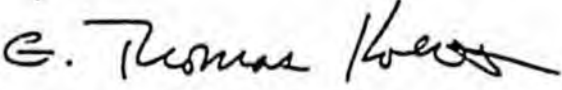
the scope of its authority. However, where, as here, Congress has made amendments to the Statehood Act which benefit the state and concern only the procedures for conveyance of land to the state rather than the quantity or availability of granted lands, Congress has not intruded on any state interest and is merely exercising its constitutional authority over federal lands within the binding framework of the existing statehood compact.

Under either approach, we believe the result is that the amendments to the Statehood Act which are part of ANILCA are effective and enforceable by the state. If you have further questions, please contact us at your convenience. We will be happy to meet with you or any member of your staff to discuss this opinion in greater detail.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By:


G. Thomas Koester
Assistant Attorney General

GTK:d1m

HJR

32



Board of Storage Tank Assistance

P.O. BOX 'O'
JUNEAU, AK
99811-1800
(907) 465-2110

Walter J. Hickel, Governor

POSITION PAPER

IN SUPPORT OF:

House Joint Resolution No. 32 (HJR32)

By the House Special Committee on Oil and Gas

SUBJECT:

Relating to Underground Petroleum Storage Tanks


A request by the Alaska State Legislature to the EPA for a delay in implementing the October 26, 1991 financial responsibility requirement.

The Board of Storage Tank Assistance wholeheartedly supports House Joint Resolution Number 32 pertaining to underground petroleum storage tanks. The Board recognizes the concerns of Alaskan underground petroleum storage tank owners and operators in regard to the October 26, 1991 deadline for meeting the EPA financial responsibility requirement. Although insurance is steadily becoming available, thereby enabling owners and operators to meet the federal financial responsibility requirement, the insurance is limited to only those owners and operators demonstrating their site is free from petroleum contamination.

Although a new state program has been implemented to assist owners and operators determine the extent and subsequently clean up contamination resulting from underground petroleum storage tanks, a considerable amount of time and effort will need to be invested to achieve that goal. Underground petroleum storage tank owners and operators in Alaska will need time to participate in this program, time to determine the scope of the problem and time to mitigate the problem. It is absolutely imperative that underground petroleum storage tank owners and operators be allowed an opportunity to clean up their sites to become insurable, without persecution from EPA. The state underground petroleum storage tank program is based on the premise of technical, educational, and financial assistance. House Joint Resolution Number 32 is consistent in that aim.

Dated: April 5, 1991

For and on behalf of the
BOARD OF STORAGE TANK ASSISTANCE,


John C. Barnett, Executive Director

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

April 4, 1991

BILL NUMBER: HJR 32 by House Oil and Gas Committee

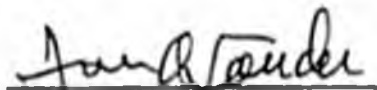
TITLE: Relating to regulation of underground petroleum storage tanks

DEPARTMENT POSITION: Support

ANALYSIS: This Resolution would ask that the Environmental Protection Agency (EPA) delay for one year implementation of it's final phase-in of the financial responsibility requirements for UST owners and operators. Currently, owners and operators of 13-99 tanks will have to demonstrate \$ 1 million in financial responsibility for releases associated with their tanks by April 26, 1991. Owners and operators of 1-12 tanks will have to meet that requirement on October 26, 1991.

Alaska's UST program became effective on March 25, 1991, and tank owners and operators are still in the process of assessing their pollution potential. Of particular concern is the small tank owner's ability to meet the requirement. Given the State's short construction season, it is doubtful these tank owners and operators will be able to complete such assessment by October 26.

The Legislature has also discussed finding an alternative funding source for the UST assistance program, one that could be approved by the EPA. Alaska would then have a State assurance or trust fund which would meet the EPA's financial responsibility requirements for all Alaskan owned and operated USTs. The additional year sought by this Resolution would give the State time to find such a funding source.



John A. Sandor
Commissioner

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HJR 32

Revision Date: _____
 Title: EPA's regulation of underground storage tanks
 Sponsor: (H) Oil and Gas
 Requestor: (H) Oil and Gas

Department Affected: DEC
 BRU: Environmental Quality
 Component: EQ Projects

COMPONENT SERIAL NO.

1	1	0	1	1	6
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
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	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Janice Adair
 Division: Commissioner's Office

Phone: 4/8/91
 Date: 465-2600

Approved by Commissioner: *John A. Seider*
 Agency: Environmental Conservation

Date: 4/8/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

Special Committee on Oil and Gas
Bill Hudson - Chairman

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

April 19, 1991

The Honorable Cliff Davidson
Chairman
House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Mr. Chairman:

The House Special Committee on Oil and Gas reported HJR 32 out of committee on April 5, 1991. Consideration of this resolution this session is critical. Through an oversight, this request was not made sooner and does not reflect on the importance of this resolution.

As part of regulations adopted in 1986, the Environmental Protection Agency (EPA) mandated that all petroleum underground tank owners and operators demonstrate a minimum of \$1,000,000 in financial responsibility by October 26, 1991. The problem that has arisen, however, is that most tank owners have some degree of contamination and as a result are unable to meet the financial responsibility requirements.

The Sixteenth Legislature enacted AS 46.03.360 - 46.03.450 with the intent of helping owners meet the financial requirements. In order to do so, it is necessary to determine the scope of the problem and begin to mitigate it.

The Committee believes that it is critical that tank owners be given the opportunity to clean up their sites prior to trying to obtain the required financial responsibility. Most tank owners are in the early stages of this process and due to the short construction season will probably not be able to complete this process prior to October 26, 1991.

The Honorable Cliff Davidson
Page 2

For this reason, the House Special Committee on Oil and Gas introduced HJR 32 requesting the EPA to delay implementation of the financial responsibility requirements for one year in Alaska. This resolution is supported wholeheartedly by the Alaska Department of Environmental Conservation, the Board of Storage Tank Assistance and the Alaska Tank Owners and Operators Association. I know of no opposition to this resolution and for that reason I ask for its quick consideration.

Respectfully,



Bill Hudson
Chairman
House Special Committee on Oil and Gas

HJR

35

NPMC

NORTH PACIFIC MINING CORPORATION

121 West Fireweed Lane, Suite 102
ANCHORAGE, ALASKA 99503
(907) 276-6762 - OFFICE
(907) 276-4982 - FAXCOM

FAXCOM TRANSMITTAL SHEET:

PAGE 1 OF 2

DATE: March 6, 1992

TO:

AK STATE HOUSE
NATURAL RESOURCES COMMITTEE

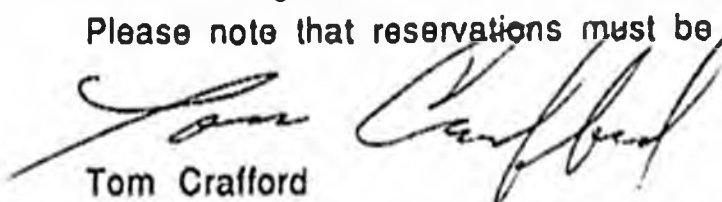
FROM: Tom Crafford

SUBJECT: Alaska Miners Assoc. Nevada Mine Tour

The Alaska Miners Association will be sponsoring a tour on April 26 - May 1, 1992 (see accompanying sheet) of bulk tonnage gold mines in Nevada. This tour will provide a great opportunity for industry professionals; municipal, state and federal officials; and other interested parties to learn more about this type of mining. Additionally, it will provide a forum for those groups to exchange their ideas and concerns.

Included in the tour will be a visit to the famous Sleeper Mine, owned and operated by the same company, AMAX Gold, that is developing the Fort Knox gold prospect outside of Fairbanks.

If interested, please contact the Alaska Miners Association, 501 W. Northern Lights Blvd., Suite 203, Anchorage, AK 99503, Tel. # 907-276-0347. Please note that reservations must be finalized by March 20.


Tom Crafford

President, Alaska Miners Association

IF YOU HAVE ANY QUESTIONS OR DID NOT RECEIVE ALL OF THE PAGES OF THIS COMMUNICATION,
PLEASE CONTACT OUR OFFICE AT (907) 276-6762.

TELECOPY COVER SHEET

Fairbanks Legislative Information Office

Office - (907) 452-4448 Fax - (907) 456-3348

TO: June 710 House Resources Ctr. FAX: _____ PHONE: _____

FROM: Carl Beistler PHONE: _____

INSTRUCTIONS: Written testimony for TC 92-02-112 -
2/27/92 @ 3:00 p.m. Please forward to Rep.
Davidson's Office - Thanks!

RECEIVED: Date _____ Time _____

SENT: Date 2/28/92 Time _____

DISPOSAL OF ORIGINAL: Discard _____ Hold for Pickup _____

NUMBER OF PAGES: _____ (Not counting cover sheet)

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TELECOPY COVER SHEET
New Jersey Legislative Information Office
Office - (907) 443-5555 Fax - (907) 443-2162

TO: Bureau LIO - House Resources Committee.

ATTN: _____ FAX: _____ PHONE: _____

FROM: Becker - Norm PHONE: _____

INSTRUCTIONS: written for (H) Resources + IC 92-09-112.

SENT: Date 2-28 Time 10:20a

NUMBER OF PAGES: 1 (NOT counting cover sheet.)

TRANSMITTED BY: Becker

(Original in the mail.)

CORRECTION

**THIS DOCUMENT
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TO ASSURE LEGIBILITY**

TELECOPY COVER SHEET

Fairbanks Legislative Information Office

Office • (907) 452-4448

Fax • (907) 456-3348

TO: Gene HIO Gene Karamian Gutz FAX: _____ PHONE: _____

FROM: Carl Beithle PHONE: _____

INSTRUCTIONS: Written testimony for TC 82-02-112 -
2/27/92 @ 3:00 p.m. Please forward to Rep.
Davidson's Office - Thanks!

RECEIVED: Date _____ Time _____

SENT: Date 2/28/92 Time _____

DISPOSAL OF ORIGINAL: Discard _____ Hold for Pickup _____

NUMBER OF PAGES: _____ (Not counting cover sheet)

SENT BY: Gene



Alaska State Legislature

Please enter into the record my testimony to the House Resource Committee
committee name

committee on HJR 35 Federal Mining Law, dated held February 27, 1992, 3:00 p.m.
bill/subject

On behalf of the Alaska Minerals Commission I endorse approval of HJR 35, Federal Mining Law in accordance with Findings and Recommendation #26, Mining Law of 1872 on page 8 of the 1992 Report of the Commission. The Report was distributed to all members of the Legislature. Please let me know if you have any questions about the Commission's Recommendation.

Signed: Carl H. Beutler Chairman
Testifier
Alaska Minerals Commission
Representing (Optional)
P.O. Box 80148
Address
Fairbanks, AK 99708
Phone No.



TELECOPY COVER SHEET
New Jersey Legislative Information Office
Office - (907) 443-5555 Fax - (907) 443-2162

TO: Bureau LIO - House Resources Committee

ATTN: _____ FAX: _____ PHONE: _____

FROM: Becker - Name PHONE: _____

INSTRUCTIONS: Written for (H) Resources + IC 92-02-112

SENT: Date 2-28 Time 10:20a

NUMBER OF PAGES: 1 (NOT counting cover sheet.)

TRANSMITTED BY: Becker

(Original in the mail.)



Alaska State Legislature

Please enter into the record my testimony to the Resources
committee name
committee on HJR No. 35, dated 2-27-92
bill/subject

We wish to voice our strong support of HJR #35 to retain the current federal mining law. The existing law is not "out of date"- having been amended numerous times. Future needs can be met under this existing law by additional modification as necessary. Bills such as HR918 would be very detrimental to the mining industry and subsequently to the entire country.

Signed: Bruce H. Tweet Bruce H. Tweet
Testifier

N B. Tweet & Sons
Representing (Optional)

Box 1107
Address

Nome, AK 99762 (907)443-5168
Phone No.

ALASKA MINERALS COMMISSION

April 17, 1991

Honorable Cliff Davidson
House of Representatives
P.O. Box V
Juneau, AK 99811


Dear Representative Davidson:

On behalf of the Alaska Minerals Commission, I urge your timely support for passage of SJR 27 and HJR 35, "relating to support for the existing federal mining law system."

The resolutions echo a recommendation made by the Minerals Commission in its 1991 report to the Governor and Legislature supporting the existing 1872 mining law.

U.S. Congressman Rahall of West Virginia will be holding a hearing in Fairbanks on May 25, 1991, relating to proposed changes in the 1872 Law. It would be of enormous importance to be able to report at these hearings that the Legislature of the State of Alaska supports the existing Mining Law without the onerous and potentially damaging changes.

Sincerely,


Earl Beistline, Chairman
Alaska Minerals Commission
P.O. Box 80148
Fairbanks, AK 99708

EB/lvs5281t
41791b

Alaska State Legislature

P.O. BOX 671104
CHUGIAK, ALASKA 99567
(907) 688-4798

WHITE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-2199/2116
FAX (907) 465-2294



MEMBER
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

FINANCE SUB COMMITTEE
COMMERCE AND ECONOMIC
DEVELOPMENT

Representative Mary Miller

TO: Representative Cliff Davidson, Chairman
House Resources Committee

DATE: February 25, 1992

FROM: Representative Mary Miller *MM*

RE: HJR 35: Relating to support for the existing federal mining law system.

As our state's largest landowner and largest employer, the federal government exercises an extraordinary amount of influence over the State of Alaska. We Alaskans must therefore exercise an equally extraordinary level of vigilance when Congress ponders measures that threaten to disrupt our resource-driven economy. I have introduced HJR 35 in support of the existing Federal Mining Law System for precisely this reason.

The Federal Mining Law System finds its origins in the General Mining Law of 1872 and has served our country well as it evolved through amendments and case law over the past twelve decades. The enduring value of the General Mining Law rests in its preservation of a social contract between the individual prospector and the government. Now, however, both houses of Congress are considering legislation that would effectively annul that contract by eliminating the ability of miners to profit from their labor. This will be accomplished through a legion of measures that will raise and expand land-use fees to insupportable levels, that will further limit the lands available for mineral exploration and extraction, and that will severely restrict the operational latitude of ongoing extraction enterprises. In short, these proposed measures would have a devastating effect on the U.S. mining industry generally and an even more dramatic impact on the Alaskan mining industry specifically. The moratorium on future mining patents proposed by some Congressional legislators will not need to be imposed by statute, the laws of the marketplace will accomplish this by fiat. Over time, capital depreciation and foreign subsidies will impose a similar sentence on existing operations.

The members of this committee have been provided with supplementary materials

DISTRICT 15

CHUGIAK

EAGLE RIVER

FORT RICHARDSON

MULDOON

that explain the proposed revisions to the Mining Law in greater detail and will soon have the benefit of expert testimony to aid in the evaluation of these difficult issues. I would therefore like to confine my additional comments to a brief refutation of four major arguments typically advanced by opponents of the existing Mining Law.

Opponents of the Mining Law routinely condemn it as the product of a bygone era entirely outmoded by modern realities. Taking aim at this "frontier relic" in a Sunday editorial entitled "1872+119=trouble", one major Alaskan newspaper lamented that "in all those 119 years, one thing hasn't changed: the essential elements of the federal mining law of 1872" (*Anchorage Daily News*, June 2, 1991). The obvious problem with this argument is its invention of a false sensibility. For example, one would hardly complain that "in all those 200 years, one thing hasn't changed: the essential elements of the Bill of Rights." Furthermore, the rather strong implication that the Mining Law has remained in an unnatural stasis for twelve decades is simply false. The Mineral Leasing Act of 1920 and the Materials Act of 1947 each represented enormous changes in the Mining Law, which has continued to evolve through minor amendments and a large body of case law. A second major complaint of those who oppose the existing Federal Mining Law is that the law does not comprehensively address environmental protection issues. This is not a true argument at all, but rather a truistic observation totally unrelated to the merits of the Mining Law itself. The Mining Law is a land tenure law and was never intended to be an environmental law. Thus, while opponents of the Mining Law clearly mean to suggest that defects in that law have allowed the mining industry to escape environmental responsibility, their implication is once more simply false. Like any other industry, the mining industry remains subject to federal environmental protection laws of general applicability, such as the Clean Air Act and the Clean Water Act. In fact, a significant body of federal laws directly or indirectly amends or modifies both the Mining Law and the operations conducted under it.

This brings us to the widespread charge that miners have a unique and unfair ability to purchase federal land at the ridiculously low price of \$2.50 to \$5.00 an acre. In point of fact, this not a purchase fee, but rather the administrative fee to apply for a mineral patent. Once paid, there is no guarantee that such a patent will be granted. But this entire subject merely serves to cloud the true costs associated with gaining a mineral patent. Long before a patent may be applied for, the applicant must have already met both the "Prudent Man Test" and also the extremely rigorous "Marketability Test". It is not my intention to pretend that the Federal Mining Law System is not sometimes abused for the purpose of land speculation. Such abuses are quite rare, however, and it is precisely the rarity of these abuses that makes them noteworthy when they are brought to our attention.

Finally, it has come to my attention that a favorite ploy of anti-Mining Law activists is to suggest that members of Alaska's Congressional delegation employ a double-standard when they argue in favor of preserving the Federal Mining Law System.

These critics point to the fact that our state's own mining law is much more strict than the federal law: it imposes rental and royalties fees, and does not allow a miner to buy clear title to the land. What these critics fail to mention, however, is that these measures were forced upon our legislature in 1987 by the Alaska Supreme Court's decision in *Trustees for Alaska v. State* (736 P. 2d 324) that Alaska's mining laws were in violation of the leasing requirements established in Section 6 (i) of the Statehood Act. Therefore, the origin of Alaska's rent and royalty fees can be directly traced to a federal mandate that threatens the forfeiture of state lands to the federal government if Alaska does not comply.

Let us then briefly examine the impact that Alaska's newly established levies have had on the Alaskan mining industry: in 1989, 6,653 mining claims on state land (app. 18%) were abandoned from among the roughly 37 thousand claims; in 1990, 2,126 claims (app. 7%) were abandoned from a total of 31,059; and in 1991, 3,236 claims (app. 10%) were abandoned from a total of 30,467. This represents a drop of approximately 27% in three years. These dramatic results were achieved by imposing a 10% tax on the net profits of mining enterprises: 7% for mining license, and 3% for royalties. Not to be outdone, Congressional opponents of the Federal Mining Law System intend to surpass Alaska's statutes by requiring a minimum 5% royalty on gross receipts. The imposition of such a royalty would accomplish two things in Alaska. First, it would severely retard, if not terminate, minerals exploration. Second, it will render a significant portion of the 29,267 mining claims located on federal land in Alaska insolvent.

It is our responsibility as legislators to defend the interests of the Alaskan people. Ironically, however, many of Alaska's most important battles are fought a continent away by people who very often lack a basic understanding of the unique gifts and burdens of our way of life. That way of life is being threatened by those who seek to undermine the foundations of the Federal Mining Law System. I therefore urge the members of the Seventeenth Alaska State Legislature to take this opportunity to defend Alaska's manifest interests by issuing a clear statement in support of the existing Federal Mining Law System.

HOUSE JOINT RESOLUTION NO. 35
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES M.A.MILLER, Sharp

Introduced: 4/2/91

Referred: Resources

A RESOLUTION

1 Relating to support for the existing federal mining law system.

2 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 WHEREAS the federal government is and will continue to be the largest landowner in the State
 4 of Alaska; and

5 WHEREAS 165,400,000 acres of federal Parks, Preserves, wildlife refuges, wilderness, and other
 6 federal land in Alaska are closed to all forms of economic development, including mineral exploration
 7 and mining; and

8 WHEREAS 49,600,000 acres of federal land in Alaska are still open to mineral exploration and
 9 mining; and

10 WHEREAS a healthy mining industry can provide new jobs in many remote parts of Alaska,
 11 jobs that are well-paying, year-round, and skilled; and

12 WHEREAS the existing federal mining law system has served our nation well since it was first
 13 enacted in 1872; and

14 WHEREAS the existing federal mining law system has been amended more than 50 times to
 15 accommodate changing conditions; and

16 WHEREAS mining must already comply with numerous state and federal laws concerning water

1 and air quality, reclamation, land management, health and safety; and

2 WHEREAS if individuals and companies risk their time and money in search of economic
3 mineral deposits, they must have a reasonable assurance that they will be able to mine the minerals they
4 find;

5 BE IT RESOLVED that the Alaska State Legislature supports the existing federal mining law
6 system; and be it

7 FURTHER RESOLVED that the Alaska State Legislature urges the United States Congress to
8 continue to support the existing federal mining law system.

9 COPIES of this resolution shall be sent to the Honorable George Bush, President of the United
10 States; the Honorable Dan Quayle, Vice-President of the United States and President of the U.S. Senate;
11 the Honorable Thomas S. Foley, Speaker of the U.S. House of Representatives; the Honorable Manuel
12 Lujan, Jr., Secretary of the Interior; the Honorable Edward Madigan, Secretary of Agriculture; the
13 Honorable J. Bennett Johnston, Chair of the United States Senate Committee on Energy and Natural
14 Resources; the Honorable George Miller, Vice-Chair and acting Chair, House Interior and Insular Affairs
15 Committee; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and
16 the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HJR 35

Revision Date: 25-Feb-92 Department Affected: Natural Resources
 Title: Support for Federal Mining Law BRU: Management & Administration
 Components: Commissioner's Office
 Sponsor: Representative M. Miller
 Requestor: House Resources COMPONENT SERIAL NO. 423

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)
 This resolution does not affect DNR or State Land.

Prepared by: Carol Wilson Phone: 465-2400
 Division: Commissioner's Office Date: 25-Feb-92

Approved by Commissioner: Harold C. Heinze Date: 25-Feb-92
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

DON YOUNG
CONGRESSMAN FOR ALL ALASKA

WASHINGTON OFFICE
2201 PATRIOT BUILDING
TELEPHONE 202/225-5786

COMMITTEES:
INTERIOR AND INSULAR
AFFAIRS
MERCHANT MARINE AND
FISHERIES
POST OFFICE AND
CIVIL SERVICE



Congress of the United States
House of Representatives

Washington, D.C. 20515

February 26, 1992

DISTRICT OFFICES

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RT. 1, BOX 1806
KENAI, ALASKA 99611

BOX 177
KODIAK, ALASKA 99615

P.O. BOX 1860
NOME, ALASKA 99762

Dear Legislator:

I am in full support of House Joint Resolution 35, introduced by Representative M.A. Miller urging the Alaska State Legislature to support the present federal "Mining Law of 1872".

The "Mining Law of 1872" has allowed the mining industry to prosper for nearly 120 years. I feel the proposed changes to the "Mining Law of 1872" show a basic lack of understanding of the processes and procedures involved in the mining industry. The history of mining development indicates that it is the small prospector, usually with a new idea, who generally first establishes the existence of a mineral property. Without the incentives of the Mining Law, the U.S. would be more dependent upon foreign sources for our mineral base and therefore not as well off economically.

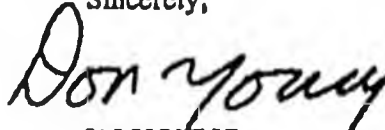
The most important aspect of the "Mining Law of 1872" is its application to lands in Alaska. The small miner is responsible for much of the cash economy in many areas of the Interior. Without mining, many would be unemployed and many small settlements simply would not exist. Those that did survive would be worse off economically without the law.

In essence, the "royalty" from mining in many cases is gainful employment, regional economic stimulation, reduced need for federal transfer payments, etc. Thus, the real benefits of the development of mines such as Greens Creek are an increased tax base, new jobs, and proud, hard-working taxpayers making a contribution to their community.

A recent study by the accounting firm of Coopers and Lybrand maintains that legislation introduced to repeal the "Mining Law of 1872" would threaten as many as 30,000 jobs and cost the federal government as much as \$230 million annually in lost revenues and increased spending.

I agree that environmental concerns need to be taken into account and I am in favor of comprehensive environmental regulations for the industry. Doing away with the present law would do more harm than good to the small miner, of which there are many in Alaska.

Sincerely,

A handwritten signature in cursive script that reads "Don Young". The signature is written in black ink and is positioned above the printed name.

DON YOUNG
Congressman for all Alaska

- All other receipts shared with States and Abandoned Hardrock Mine Reclamation fund

Existing Claims Transition

- Holder of valid mining claim has exclusive right to relocate claim under Act for three years after effective date
- Claims not converted within the three year period are null and void
- No patents issued for existing claims unless application filed and all requirements complied with by date of introduction

Miscellaneous

- Mineral Materials Act of 1947 amended to eliminate the "uncommon varieties" exception

Sen. Bumpers' 'dear colleague' letter states again the intentionally erroneous and misleading arguments he has used since the beginning of his crusade against the Mining Law of 1872. These include the \$2.50 patented land giveaway myth, the old- and unchanged- mining law farce, the true statement that the Mining Law does not regulate reclamation without making recognition of the body of other law regulating every aspect of land use, and the implication that damage under old controls is as bad or worse under new laws.

All corrections of the Senator's false statements and errors have been presented to the Senate in testimony repeated at each year's re-run of hearings. It is obvious that neither fact nor logic will deter the crusade. Only by trading our industry's historic defensive posture for a good offense can we move the game from the field and rules of the opponents, and into our own arena where fact can become the basis for judgement.

We have developed 'our own arena' which we believe all in the minerals industry can support. It is not a NWMA bill, but a proposal for a bill that all can get behind. All NWMA members have been sent a copy of the proposed bill, and all requests for copies by anyone will be immediately honored. The text of the proposed bill will not be repeated here; however, the bill will create a Commission whose purpose is to determine whether minerals policy and law, including the 1872 Mining Law, are serving the purpose of adequate domestic mineral supply. A Commission would be appointed to determine whether changes should be made, and if so, to recommend those changes to congress. The Commission members would be: A majority and a minority member of each house; Six from the public to be appointed by the President, to represent specialists in public lands and minerals, and; the chairman will be the Director of the US Bureau of Mines, Department of Interior. The Commission will have a period of three years or less to commission studies, gather facts, take testimony, and to report to Congress.

The mining community must unite, and must bring in the consumers of the products of the public lands, the suppliers to the producers of products from public lands, and the manufacturers of equipment and supplies used by the producers of our natural resources. We have many challenges to our ability to provide the nation's domestic mineral needs, but none are more critical than the maintaining of the basic tenets of the Mining Law of 1872. The gauntlet is dropped. WE MUST ALL TAKE UP THE CHALLENGE.

Rahall Bill Revisited

The 102nd Congress version of the Rahall bill to replace the Mining Law is now a reality. It is not much different than we saw in past drafts, and contains the same elements we have shown to be impossible. AMC has distributed a summary of the bill's content, and we take the liberty to pass information from that summary on to you.

We must prepare to respond to the bill if and when it comes up for hearings, just as we must for the Bumpers bill in the Senate. We believe the real answer to the Mining Law issue is to present our own solution rather than to continue to work within the framework of the opposition. Our solution is the bill to create a Mineral Policy Review Commission, a copy of which has been sent to all Association members, and which is discussed elsewhere in this issue.

The AMC summary includes the following:

The new bill, H.R.918, was introduced by Rep. Nick Joe Rahall II, (D-WV) with two co-sponsors, Rep. George Miller, (D-CA), acting chairman of the House Interior and Insular Affairs Committee, and Bruce Vento (D-MN), Chairman of the House Public Lands Subcommittee. The bill is similar to Rep. Rahall's H.R.3866 introduced last year, but contains more stringent enforcement and inspections, toughens reclamations requirements. It adds provisions for citizen suits, and creates an abandoned hard rock mined land reclamation fund.

Rep. Rahall's introduction said he premised his bill on five basic tenets:

- Patents must be eliminated.
- A substantial increase in diligent development requirements is necessary.
- A rental fee dedicated to reclamation of abandoned hard rock mines in the western states must be imposed.
- Statutory enforcement mechanisms for reclamation and a greater degree of authority for the Forest Service to manage mining activities on National Forest lands are required.
- Stringent land use planning requirements must be established.

H.R.918 eliminates the discovery concept, the distinction between lode and placer claims, and extralateral rights.

AMC provided a section by section analysis which we will provide for the asking, along with a copy of the new bill. Some of the major changes in the new bill are:

Sec.101 Adds to the definitions. Expands "Mineral Activities" to include activities on non-mining claim lands; adds definition of legal subdivisions; and deletes the definition of public domain.

Sec. 102 Adds description of, lands open to location, and more clearly defines the rights of claim holders.

Sec. 103 Similar to H.R. 3866, but modifies the claim size to allow less than 40-acre claims and describes the method of claim location where no survey exists. The procedure for conflicting claim resolution is re-written to require proof of the senior locator, and that the other claimant failed to meet the diligent development

expenditure

Sec. 104 As in H.R.3866, calls for a rental fee plus either a diligent development expenditure or payment in lieu. Added is an annual right-of-way fee of \$1.50 per acre until a mining plan is approved, and \$5.00 afterward. Diligent development expenditure minima are again \$20 per acre for years 1-5; \$40 per acre years 6-10; \$80 per acre years 11-15; and \$160 per acre each year thereafter. As in last year's bill, payments in lieu of diligent development expenditures may be made after the fifth diligence year, amounting to \$20 per acre years 6-10; \$40 per acre years 11-15; and \$80 per acre thereafter, but a change requires a five-year wait between election and beginning in lieu payments. Deferral of due diligence for hardship reasons is re-written.

Sec. 201 This section has been re-written, dealing with approval of plans, reclamation guarantees, restricted activity areas, reclamation standards and inspections. It authorizes the Secretary of Interior to close operations where violations are not corrected, and increases civil penalties from \$1000 to \$5000 per day. Citizen suits are authorized.

Sec. 203 Provides for land use planning requirements for mining activities, and requires review of all administrative land withdrawals.

Sec. 204 This new provision prevents access to wilderness study lands and wild and scenic river study areas for mineral location until Congress makes a final decision on status.

Sec. 205 Added is a savings clause that this bill does not take away existing restrictions on lands closed to mining location, and states that the bill will not preempt state reclamation or environmental laws.

Sec. 301 Amends the Surface Mining Control and Reclamation Act of 1977 to establish an Abandoned Minerals Mine Reclamation Fund administered by OSM. The fund's purpose is to provide funds to reclaim and restore lands and water resources damaged by past mining, and identifies eligible lands.

Sec.401 Gives the authority to administer this act to the Secretary of Agriculture for mineral activities on Forest Service Lands.

Sec. 402 Provides for assessing fees to pay for administration of the Act.

Sec. 403 Calls for regulations to implement the Act within 180 days after passage.

Sec. 404 Establishes transition rules for existing mining and millsite claims. Claim holder must convert his claim to the new act within three years, or the claim becomes null and void. After conversion, no distinction will exist between placer, lode or tunnel claims. Requirements for conversion of millsite claims are similar. After the effective date, no claim may be challenged on the basis of discovery, except those located on or before the date of enactment that are within National Parks, National Wildlife Refuge System, National Wilderness Withdrawals, Wild and Scenic Rivers System or National Trails System, which may be challenged by the United States. Further, claims for materials of 'distinct and special value' as defined by the Act of July 23, 1955, may be challenged by the United States.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

PO BOX 11
JUNEAU, ALASKA 99811-0800
PHONE (907) 465-2500

February 26, 1992

Honorable Mary Miller
Alaska State House of Representatives
State Capitol
Juneau, AK 99801-1182

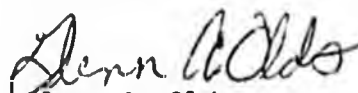
Dear Representative Miller:

Re: House Joint Resolution 35
Senate Joint Resolution 7

The Department of Commerce and Economic Development fully supports the House Joint Resolution 35 and the Senate Joint Resolution 7, relating to support for the existing federal mining law system. I further note that this action is fully consistent with the Alaska Minerals Commission's recommendations to the Governor and the Legislature in its 1992 report, page 8.

As is clearly stated in these Resolutions, future mineral development of the residual open federal lands in Alaska, about 23% of the total federal lands in the state, hinges on the maintenance of the existing federal mining law.

Cordially,


Glenn A. Olds
Commissioner

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022692a

THE MINING LAW OF 1872: ALL YOU EVER WANTED TO KNOW BUT WERE AFRAID TO ASK

by W. Richard Hahman, PG, CPG

This past fall when Tom Jones asked me to write an article for the *Professional Geologist* explaining the intricacies of the Mining Law (actually the General Mining Law of May 10, 1872), I was somewhat nonplussed. As this Act with its 119 years of case law and subsequent mineral acts modification has been carefully explained to the general public by several TV network exposés and has had significant milestone articles of explanation written by obscure authors with most dubious credentials and published this year in such prestigious scientific journals as *The Christian Science Monitor* (March 20, 1991), *Reader's Digest* (April, 1991), *U.S. News & World Report* (October 28, 1991), my comments may well be too factual for general interest. However, a promise is a promise: here is the article and may we all learn something from it.

There are two very basic and fundamental flaws in the current arguments being made against the Mining Law. The first flaw is the issues have been grossly oversimplified and distorted in an attempt to make a case for reform. When an anti-mining law 'thesis' begins with such words as "antiquated", "outdated", "outmoded" and does not acknowl-

edge the subsequent 119 years of case law modification, the objective listener should be immediately aware that the data being recited is less than accurate. In a cogent discussion of the General Mining Law of 1872 the following modifying acts should be mentioned.

The Mineral Leasing Act of February, 25, 1920, established a leasing system, both competitive and non-competitive, for coal, phosphate, oil, oil shale, gas and sodium. The Act of April 17, 1926 placed sulfur located on the public lands in New Mexico and Louisiana into the Mineral Leasing Act of 1920. The Act of February 7, 1927 designated potash, chlorides, sulfates, carbonates, borates and silicates as leasable minerals subject to the Mineral Leasing Act of 1920.

The Materials Act of July 31, 1947 established that sand, stone, gravel and common clay are salable commodities. The Act of July 23, 1955 removed the common varieties of sand, gravel, cinders, pumice and pumicite from locatable minerals and designated them to be salable minerals. Acts governing minerals on the outer continental shelf and geothermal resources and associated byproducts/coproducts have modified the Mining Law of 1872, but are not germane to our discussion.

Currently there are three categories of minerals on federal land: locatable minerals (mining claims); leasable minerals, and salable minerals. All valuable mineral deposits on federal land are open to location under the General Mining Law of 1872 except those minerals specifically designated as leasable or salable commodities. The uncommon varieties of sand, stone, gravel, cinders, pumice and pumicite are, because of their uniqueness, locatable minerals or commodities.

The modifications of 119 years of case law and the above cited specific acts have kept the General Mining Law of 1872 as current as our Constitution and Bill of Rights.

The second major flaw in the arguments of the Mining Law opponents is the issue of environmental protection. Opponents quickly point out the obvious: the Mining Law is not an environmental law. In making this statement, opponents reveal their total lack of comprehension of the purpose of the Mining Law. It is a land tenure law and was never intended as an environmental law. There are 13 major federal laws with accompanying rules and regulations that have directly or indirectly amended or modified the Mining Law to require envir-

Continued on page 11

...1872 MINING LAW

Continued from page 10

omental, historic and cultural protection. A total of 37 statutes directly amend the Mining Law or modify/apply to operations conducted under it.

Opponents of the Mining Law argue the law is no longer necessary because its original purpose, settlement of the West, has been fulfilled. This argument is false and totally misstates the Congressional history of mining law dating back to March 3, 1807. Congressional intent of mining law has always been the orderly development of mineral resources. The above cited argument totally ignores the Homestead Act of 1862, passed to promote the settlement of the West, under which Act 288 million acres of federal land was transferred (patented) to the private domain. By comparison only 3 million acres of federal land have been patented under the Mining Law.

The small miner and prospector are the research and development arm of the mining industry. Without these people the mining industry will start to decline. The General Mining Law codified that which the miners had developed into a workable system of laws to bring order to the chaotic situation in the Mother Lode country of California and Nevada. The Mining Law encourages the self-initiation of the prospector or miner by guaranteeing the access to prospect, the exclusive rights to develop a discovery and the security of tenure to hold the discovery. These principals are the core or backbone of the hardrock mining industry.

The principal finders in North America are and always have been the small miners and prospectors, not the mining company geologists. The mining companies rely on the small miner and prospector to submit their mineral properties to the company for evaluation by their geologists. Some few of these prospects make a mine, based on then current prices, supply and demand. However, mineral deposits not economic today may well be economic in the future depending upon the use, the supply and demand. Therefore, it is necessary for the federal lands to remain open for prospecting in order to meet future demands for mineral raw materials.

The right to develop a property and land tenure to hold the discovery are critical to the mining process in that private sector financing is not available without it. I can think of no institution willing to loan money to a miner to develop land he neither owns nor controls. Land where an outside administrator could shut down the mineral development on a personal whim and where citizen suits are encouraged will never be explored for mineral resources. The anti-mining lobby is well aware of this fact.

The anti-mining organizations continually point out in the media that people can pur-

chase/patent federal land for \$2.50 to \$5.00/acre under the Mining Law of 1872. As most people in the United States have no knowledge of the Mining Law of 1872 and the mineral patenting process, the above cited "purchase fees" are cause for their concern. At these quoted prices there should not be any federal or public land left. I, my colleagues and our predecessors should have had it all patented by now! Using these anti-mining environmental preservationist figures, in a 30 year period the acquisition of two square miles of patented land at \$5.00/acre (lode claim) would cost \$6,400.00. The annual expenditure to make the acquisition is \$213.34 or less than the price of one premium beer per day for a year! As hundreds of millions of acres of public lands remain available today, the anti-mining people must be leaving some facts out of their argument.

The following discussion on the mineral patent procedure is what is not being told the public. There are two major problems to be solved when patenting a claim. The first problem to be solved is the "Prudent Man" test which, stated simply, is "Is a prudent man warranted in continuing work on this mining claim with the expectation of making a profit in a mining operation?" The purpose of assessment work on claims is to demonstrate a prudent man is warranted in continuing the exploration. A few years of negative results from assessment work is grounds for the claim to be declared invalid: I have yet to meet a prospector or small miner willing to throw good money after bad. The assessment work and results must be filed yearly with the federal government.

The second test on the way to patent a claim, the "Marketability Test", is a real killer of mineral deposits. The Marketability Test requires considerable time and expenditure of money in order to demonstrate marketability of the mineral property. First the mineral deposit must be proven by demonstration either by detailed drilling and/or underground exploration and development operations, to be of ore grade and to contain enough tons of ore grade mineralization to warrant pursuing a commercial mining operation. A significant number of mineral properties leave the system at this point. The second step in the Marketability Test is a detailed mining plan of the proposed operation, including development and on-line costs of the mine, mill, transportation, smelter and then the product marketability. This phase is essentially cost accounting and the projected rate of return should show a reasonable profit. The report generated by all this work is submitted to the Federal Government along with the administrative fee of \$5.00/acre (lode claim). It is at this point in the process that the Federal Government substantiates and evaluates the property report and cost accounting. If both sides' evaluations are

in reasonable agreement, then, in all probability, a mineral patent will be issued. However, if the Federal Government is unable to substantiate the report and cost accounting, it may most discretely request the quiet withdrawal of the application for patent. Should the miner elect to not heed this most practical advice and instead force an official ruling on the claims and that ruling is negative, the ground is declared officially open again for mineral location. All work and expenses incurred by the miner prior to the ruling are lost and he must start over.

The above description of the mineral patenting procedure indicates considerable expensive work is required to patent a claim. The claim holder must show proof that a mineral deposit can be mined at a profit, (a process usually costing millions of dollars), before earning the right to pay the purely administrative fee of \$2.50 - \$5.00 per acre for patent. A far cry from the \$2.50 - \$5.00 fee reported in the media, the current average cost per acre to patent a mining claim is \$11,000.00 or \$220,000.00/20 acre claim. Definitely not beer money!

The anti-mining environmental preservationists make a big issue stating that hard rock miners on public land pay no rental fees or royalties to the federal government. Statements such as "If someone is mining on your land wouldn't you expect to receive a rental fee and a royalty?" are common in their discussions of the Mining Law. The obvious answer is "Yes!". However, federal and state governments have the power to levy taxes and the private property owner does not.

At this point a comparison of the number of leasable, royalty paying operations versus

Continued on page 14

...1872 MINING LAW

Continued from page 11

the claimable operations in the United States, including the outer continental shelf is definitely in order. The following figures are current as of 1991.

There are 606,890 domestic oil wells and 257,279 domestic gas wells in production. There are 2,915 domestic coal mines in production. In addition, the above cited commodities generally occur as flat-lying deposits covering a comparatively wide area. Therefore, these commodities do not carry the high risk of discovery and development associated with the hard rock minerals.

At present there are about 70 hardrock mines in production. 58 of these 70 mines produce the "lion's share" of the metal production in the United States. Thirteen copper mines produce 95% of U.S. production. Ten iron mines produce 99% of U.S. production. Nine lead mines produce 100% of U.S. production. 25 gold mines produce 75% of U.S. production. One platinum mine produces 100% of U.S. production.

As can be seen, equating hard rock mining to the rental/royalty commodities which oil, gas and coal represent is a fallacious exercise. The only similarity is that all products come from the earth. Hard rock mineral resources are very, very rare. The hard rock mining companies in the United States control neither the commodity price nor the market place in which they must operate. The foreign competition, often subsidized by its government, is not required to devote as much of the unit price of the produced metal for environ-

mental controls as are the U.S. companies. As an example in the United States 15 cents of the price per pound of copper goes for environmental controls. The foreign competition, not hampered by environmental laws and regulations, have an automatic 15 cents per pound price edge on a commodity which is currently priced at approximately \$1.00/lb. The addition of a royalty and/or rental fee would be added costs that could not be passed on to the consumer as is done in the fuel minerals/commodities.

At this time it should be pointed out that neither the laws of supply and demand, nor costs versus selling price/profits have been repealed by the anti-mining environmental preservationists. These laws still drive the market place. Therefore, the value-added manufacturers or industry will always purchase raw material from the least expensive supplier, not the most environmentally sound supplier. Should the U.S. metal mines demand the same protection environmentalists give American tuna fishing fleets by banning foreign tuna topped with dolphins?

One thing that must be kept in mind is the higher the royalty, the higher the mine ore grade cut-off will have to be to accommodate it. The higher cut-off grade means less low-grade ore is mined resulting in less metal produced, fewer jobs, less taxes received and a decrease in mine life. Less taxes from the metal mining industry means more taxes must be collected from the general public.

The metals mining industry pays many different federal and state taxes including taxes on unmined reserves in the ground. There are the corporate income tax and excise

and severance taxes. In New Mexico in 1989 the hard rock mining industry paid 38 million dollars to the state in excise and severance taxes. Without these taxes the citizens of New Mexico would have to make up the difference.

The dividends paid to stock holders are taxed. Then there are the personal income taxes paid by the corporate officers and employees. Additional taxes, both state and federal, are paid by companies and personnel of the support service industry required to keep the mine, mill and, where applicable, the smelter running in a smooth, cost effective manner.

Fifty years ago this article would not have been necessary. In those days people well understood the origin of their homes, tools, clothes and other material possessions. They knew business and industry paid the lion's share of the taxes supporting schools, roads, fire and police protection. They were well aware of the materials necessary to produce electricity and other fuels. People today have forgotten what their predecessors knew: "If it can't be grown, it has got to be mined!"

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Section 6 (i) The Alaska Statehood Act, 1958

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



ALASKA MINERS ASSOCIATION, INC.

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House Joint Resolution 35

Relating to support of the existing federal mining law system.

For the record, my name is Steven C. Borell, I am the Executive Director of the Alaska Miners Association and this testimony is on behalf of the Association.

Thank you Mr. Chairman for scheduling this bill and for the opportunity to provide testimony at this time. The federal mining law system provides the legal framework defining how private citizens, prospectors, and mining companies are allowed to gain a property right to minerals on the federal public lands. This law is therefore crucial for the future of the mining industry in Alaska and the nation.

At this time, there are three bills in the U.S. Congress that would fundamentally change the federal mining law system. Two of these bills are under serious consideration. These bills have had various hearings, including one held in Fairbanks in May of 1991. One of the bills is H.R. 918 is sponsored by Congressman Nick Joe Rahall of West Virginia, a state with mainly private lands but no lands to which the federal mining law applies. The other bill is S.433 sponsored by Senator Dale Bumpers of Arkansas, a state with only a few thousand acres to which the federal mining law applies.

Both of these bills would destroy the basic principles of the mining law system that has served our country well for over 120 years. During that time the federal mining law has been changed and amended more than 50 times but without destroying the basic principles which are the right of self initiation and the right of secure tenure.

The right of self initiation means that the private citizen does not have to get government permission before he or she goes out and looks for minerals on the public lands. And if a valuable deposit is found, the private citizen can initiate a "claim" to the minerals.

The right of secure tenure means that once the citizen has spent his or her time and money searching for and has found a mineral deposit, and if he follows a detailed set of rules involving staking, diligent work and recordation, a third party cannot take it away. The government can take it by condemnation but a third party cannot.

ALASKA MINERS ASSOCIATION, INC.

Once a valuable mineral deposit has been found, the miner must then obtain many different permits before he can actually begin mining. Some criticize the mining law saying that it does not require reclamation. That is correct. Some criticize the mining law saying that it does not include land planning and that also is correct.

The mining law is a property right law. It defines a very exacting and complex set of requirements that must be met for a private citizen to gain a property right to minerals that he or she finds on federal land. This property right law does not include reclamation. Nor does it include worker safety. Nor does it include water quality requirements nor air quality requirements, nor federal income tax law. These and many more topics are covered by other laws and are not and should not be in the mining law. The miner must comply with each of these laws but placing them in the mining law would merely result in duplication, confusion, and such uncertainty when such requirements have to be meshed with other existing laws covering the same subjects.

As for land planning, most of the federal land in Alaska is already off limits to mining. Almost one half of Alaska or a total of approximately 165.4 million acres of federal land in Alaska is in Congressionally designated Parks, Preserves, Wildlife Refuges, Wilderness and other restrictive categories. This is nearly the size of the entire state of Texas. Another comparison is that the amount of federal land in Alaska now closed to mining is equal to the combined total acreages of the states of: New York, New Jersey, Pennsylvania, West Virginia, Ohio, Indiana, and Illinois.


Some of the best mineral ground in the state is in those lands that are now closed. On February 13, 1992 the Alaska Miners Association addressed this House Resources Committee and talked about issues of concern to the industry. We very much appreciated that opportunity. One of the speakers was Mr. Joe Piekenbrock, a geologist with Placer-Dome Alaska, Inc. He described how mining companies typically search for minerals by looking in areas adjacent to major known deposits. He used the examples of Greens Creek, Red Dog, Kennicott and the A-J to show how the most promising lands in the state are already locked up in federal parks, preserves, wildlife refuges, etc. Land planning by the Congress has already had a tremendous adverse impact on Alaska and its economic future. With the passage of ANILCA (Alaska National Interest Lands Conservation Act), Alaskans were promised that there would be "no more" federal set-asides and that the rest of the federal lands would be available for economic development purposes. The changes being proposed by H.R. 918 and S.433 would in large part negate that promise.

These bills will have an adverse affect on the economy of Alaska and the entire United States. A study titled "Economic Impact of Mining Law Reform" has just been completed by the joint efforts of the accounting firm of Coopers & Lybrand and the law firm of Davis, Graham & Stubbs. The study is dated January 28, 1992 and concluded that if S.433 and H.R. 918 were now in place:

- 1) some mines now operating would never been built;
- 2) there would be between 10,000 and 30,000 fewer jobs in the mining industry in the Western U.S.;
- 3) the federal government would have an estimated annual net loss of \$230 million if S.433 was in effect or an estimated annual net loss of \$125 million if H.R. 918 was in effect;
- 4) in the 12 western states, under S.433 about \$3.8 billion worth of economic activity would be lost each year and under H.R. 918 about \$1.5 billion worth of economic activity would be lost each year.

In conclusion, the federal mining law system is important for the economic future of Alaska. In many areas of the state minerals development has the very best chance for producing new jobs and economic opportunity. We urge you to pass this resolution.

Sincerely,



Steven C. Borell, P.E.
Executive Director

ALASKA MINERS ASSOCIATION, INC.

LAND STATUS IN ALASKA (Millions of Acres)

	<u>Total</u>	<u>Total "Wilderness"</u>	<u>Total Closed to Mining</u>	<u>Total Open to Mining</u>
<u>Federal Lands</u>				
National Park Service	54.7	32.8	54.7	0
U.S. Fish & Wildlife	77.1	18.5	77.1	0
U.S. Forest Service	22.8	5.7	5.7	17.1
Bureau of Land Mgmt.	57.9	2.4(2) 23.0(3)	2.4 23.0	32.5
Department of Defense	2.5	..	2.5	0
Subtotal	<u>215.0(1)</u>	<u>82.4</u>	<u>165.4</u>	<u>49.6</u>
<u>State Lands</u>				
State Parks	3.2	..	3.2	0
Administrative Mineral Closures	5.3	..	5.3	0
Other State Lands	77.9	..	0	77.9
Not Selected/TA'd	18.	..	0	18.
Subtotal	<u>104.4(1)</u>	..	<u>8.5</u>	<u>95.9</u>
<u>Private Lands</u>				
Native Corporations	45.6	..	0	45.6(4)
Other private	0.5	..	0.5	0
Subtotal	<u>46.1</u>	..	<u>0.5</u>	<u>45.6</u>
Total	<u>365.5</u>	<u>82.5</u>	<u>174.4</u>	<u>191.1</u>

- (1) Final acres that will result after all State and Native land transfers.
- (2) Wild and Scenic River Corridors total approximately 2.4 million acres and these are managed the same as Wilderness designated lands.
- (3) National Petroleum Reserve Alaska is effectively managed as Wilderness.
- (4) Open to mining if leased from Native Corporations.

Comments of
Neil MacKinnon
on
H.R. 918
May 25, 1991

Mr. Chairman, members of the Committee, thank you for the opportunity to testify today.

For the record, my name is Neil MacKinnon. My great grandfather came into this land from Nova Scotia to prospect under the Mining Law of 1872, one of the few laws in the then District of Alaska. I am a graduate of the University of Alaska with a degree in mining engineering. Since graduation, I have supported my family and prospecting habit as a businessman in Juneau. I have been involved in numerous prospecting ventures and have negotiated many mining agreements both as lessor and as lessee. I was a member of the City and Borough of Juneau's mayor's committee on the mining lease for the A/J mine and the committee that drafted the local Juneau mining ordinance. Last year in my role as president of the Alaska Miners Association I was part of the working group of miners, environmentalists, and state representatives that drafted Alaska's mining reclamation law. I am speaking today for myself, and my family.

With the example of the failure of the planned economies of Russia and Eastern Europe so vividly before us, it will be ironic if this nation discards a law that has stood us well and moves down the path that led to their failure.

The roots of the Mining Law of 1872 can be traced back to the Middle Ages in Europe and can be said to form the foundation for many of the freedoms we as a people enjoy today. The law of 1872 is a people's law. It makes the individual in the mining business equal to the large corporations of this world. Under the law, anyone can prospect. The mining business is open to all with the initiative and interest to enter it. In that way it has been instrumental in providing us with the standard of living we enjoy today.

Why are we changing this law? Because it is old? So is our constitution and like our constitution the Mining Law of 1872 has been modified many times. Both specifically and by general environmental and land laws that have been the recent trend. (NEPA, FLMMA, Clean Water Act, Clean Air Act, wetlands, and coastal zone to name a few.)

Are we trying to fix the abuses and problems in the law? Then let's fix them. But let's fix the real abuses and problems, not the precieved ones. Let's create a system that will enhance our mineral industry, not drive it to foreign lands. Let's make it possible for this nation to enjoy the economic activity and wealth that mining creates.

To be sure, there are some good points to H.R. 918. The wisdom of charging rent and not a royalty is refreshing. It is fair that the miner pay a reasonable rent for a claim and it is right to reclaim the past with that rent.

It is time that annual labor be increased to promote the development of mineral claims, but not be increased to the point that one cannot afford to pursue a mine because of it.

I also see in H.R. 918 the potential to open lands that are now closed to mining. It is a small potential but the fact that it exists in this bill gives me cause for hope.

But as hope gives way to fear let me say my greatest fear in changing the mining law is that many of those who advocate such change do so not to encourage responsible mining on the public lands, but to eliminate mining from the land altogether. The slogan "mine free by ninety three" comes to mind when I examine H.R. 918, for contained within the provisions of this bill are the tools that will eliminate mining from the land.

How will mining be eliminated? By planning us to death with unending study and the opportunity for "citizen suits" all along the way. By tying mining up in an ever increasing bureaucratic and legal morass. By closing all land to exploration except that which the bureaucracy specifically opens. By increasing the risk that through government fiat the prospector will lose his investment without compensation.

To change the law and still retain a viable industry is possible. But it will take more consideration of the true problems and abuses. More thought about the real consequences of change and more attention to the experience of the failure of the planned economies of the world.

Specific comments:

TITLE I - Title and Rights

Section 101

(a)(1) Diligence Year - the diligence year should follow the present assessment year practice of from September 1 to August 31 of each year. The confusion of dates presented by the proposed system will increase error and make it much more difficult for a person to tell if the requirements of this act have been met. Rent can easily be prorated for the fraction of the year to September 1.

Section 102

(b)Rights - some guarantee of access to a mineral deposit is crucial. Minerals must be developed where they are found. Without reasonable access a mineral deposit will be worthless. Without some guarantee that reasonable access will be available a mineral deposit is not worth searching for.

Section 103

(c)(3) - the historical precedent has been that the ground location always determined conflicts. The ground location has always held precedent because it relates directly to the minerals in the ground and that is what the miner is trying to acquire. If the notice will be determinative as proposed, then why even go through the bother of locating the claim on the ground, erecting monuments, and marking lines.

(g) Conflicting locations - adjudication of mining claims was tried by the State of Alaska Division of Mining. They soon were over two years behind on recording mining claims on their status plats. In every one of the adjudications I was associated with they were wrong and reversed. The cost of adjudicating and staff requirements will outweigh any benefit the nation could receive. I suggest you collect the rent and due diligence from both claimants and let them sort it out between themselves.

Section 104

(a)(1) - a reasonable rent is by far more preferable for all parties concerned than a royalty for several reasons. First, the odds of any given mineral discovery will result in a mine are less than one thousand to one. This fact alone means that there will always be many more claims paying rent than producing mines paying royalty. Secondly, Mr. Rahall is absolutely correct in his assessment of the government's inability to assess and audit any royalty. The treasury will always derive more money from rents than royalties no matter what the rate of taxation.

If one analyzes the wealth created from a mine (for that is what we are doing, creating wealth) through its first layer of distribution you will find that one-third goes to capital, one-third to labor, and one-third to the federal, state, and local governments. So, to me, it seems that the pie is being split as evenly as possible and any increase in the division for any party will come only at the expense of the other two. Adding an additional tax in the form of a royalty creates a disincentive to

produce minerals and diminishes, not increases, the revenue the treasury will receive.

As a point of information, the State of Alaska has recently instituted a rent for state mining claims. The initial assumptions were that 50% of the claims would be relinquished by the imposition of rent of \$.50/Acre. The actual loss in the first year was in the order of 20% of the approximately 40,000 claims existing before rent. This year Alaska expects to receive over six hundred thousand dollars in rent and will expend about one hundred thousand dollars in collection and administration.

(a)(2) - Deferring of diligent development expenditures should also be allowed because of lack of permits to operate from state and local governments.

(c)(2)(B) - any mineral sampling and testing should be allowed. Bulk sampling is but one type or phase of testing.

(C)(2)(f) - other mineral activities should also include filing fees and permitting costs and fees. While tradition has invalidated transportation of personnel as an allowed assessment expense this too should be allowed to encourage housing of exploration personnel in other than a camp on the claim.

(C)(2) - the diligent development expenditures as proposed in the early years are within reason. However, the diligent expenditures proposed for claims after eleven years will be a significant burden for the small prospector unless excess diligent development expenditures from previous years can be carried forward. This section will also cause exploration programs to be designed around meeting the diligent development expenditure and all work will halt for the diligence year once that amount has been reached.

The State of Alaska allows a miner to carry forward excess annual labor four years and the system works fine. I argue for and allow a carry forward provision in all my mining agreements because it makes good sense and serves to develop the minerals. The federal government should adopt it also.

(d) - Payment in lieu of diligent development - this is an admirable concept for enhancing receipts to the treasury but does not serve to develop any mines. On a year-to-year basis the concept has merit but I fail to see the reason or need to lock a claim holder into five years of cash payments in lieu of diligent development expenditures.

(e) - Deferment, waiver or reduction - this is another admirable concept for taking care of the small miner. However, I cannot envision any bureaucrat sticking his neck out to grant relief except in the most unusual of circumstances and even then, he will be open for litigation under section 202 (e), citizen suits. It is worth keeping the concept in the bill, but we are fooling ourselves if we think it will help the small miner except in the most extraordinary situation.

Section 105

(a)(3) - the penalty for failure to comply under section 104(g) is the loss of the claims. Adding an additional penalty of up to \$5,000.00 per day seems to me unusually harsh.

Section 106

Access through and across federal lands should be added to the list of permitted activities that the Secretary can make land available for.

Section 108

The present operation of the patent law and requirements make it impossible to risk going for a patent unless one is actually mining at a profit. At that point, why bother? What is important to the industry is long-term tenure and security for one's investment in the minerals. Patenting just the mineral and not the surface would provide that assurance. The time it takes to put a mine into production makes this a long-term business that requires stability to function efficiently. A patent to the minerals only, would satisfy most of the arguments against patenting and still provide long term protection for the prospectors investment in the minerals.

TITLE II - Environmental Considerations

Section 201

(a) - I agree and let me add that I also think everyone should do the same. The present plethora of environmental laws federal, state and local do just that.

(b)(4) - This section will designate all federal lands off limits to mining until the Secretary opens them. But only after the

Secretary has made provision for a land use plan and that plan has withstood any "citizen" suits would one be able to even prospect any presently open federal land. Mineral exploration, even on existing claims, could be impossible for years. One can look to Alaska's next door neighbor, the Soviet Union, to see the economic and environmental disaster that planning has wrought.

(c) - Reclamation - I was part of the group of miners and environmentalists who worked with the Alaska legislature and administration to develop a reclamation law. Reclamation is the law in Alaska on all lands, federal, state and private. Requiring reclamation to a capability of supporting the previous condition is reasonable. However I don't believe that requiring reclamation to a higher or better use is fair or reasonable. It is wise to allow for such reclamation but not to require it.

(c)(2) - Standards - I see here the laundry list of requirements some reasonable and necessary and some that will form the basis for more citizen suits by anyone wishing to stop a mining operation, for whatever reason. In Alaska a standard that is appropriate in one part of the state will be impossible to meet in another. The plan of operations is the place to set the requirements. The standard has been set in the preceding section (1). The Congress would be wise to let the specific methods of achieving the standard be set at a level closer to the ground.

Section 202 - inspection and enforcement

(a)(1) - Mandated quarterly inspections could be an extreme hardship and possibly life threatening for the miner and government personnel in Alaska's winter. The frequency of inspection should be a function of the level and timing of the operating plan being inspected. This seems to me to be more of an operating policy and not of the level of the general land law.

(e) - Citizen suits - this paragraph is misnamed for one need not be a citizen to sue the Secretary. We are seeing this concept being proposed more frequently, especially in relation to the environment. This will be one of the main tools used by anti-development forces to stop any project by paralyzing the government which issues the permit. The much acclaimed environmental goal for the public lands of "mine free by ninety three" will be realized through citizen suits.

Section 203 - Land use plans

This section is in conflict with section 102 which says that mining claims may be located on "such lands and interests that were

open to the location of mining claims on the date of enactment of this Act". This section would require the Secretary to perform an environmental impact statement on any lands opened up for mineral location and will effectively close all federal lands to mineral entry under the guise of planning.

To open any lands the Secretary will have to run the gauntlet of citizen suits and study the lands to such an extent that only the most valuable of mineral deposits could withstand the costs and time involved. There are environmental groups and government agencies that routinely oppose any proposal for development. They demand that all possible, not just reasonably foreseeable, effects and consequences be studied and studied and analyzed in order to delay, frustrate, and kill the development proposal.

The Tongass National Forest is in the process of revising its forest plan. They have had a team working for over two years and are working on their second revision of the draft EIS. (Some members on the planning team joke about the perpetual planning process and it might be funny if it weren't so true and costing us all time and money.) The initial planning did not even consider minerals at all. It took intense pressure on the part of the mining community to even get the forest service to consider minerals as a prescription and part of the Tongass plan. Even so, they have only given minerals the most cursory of treatments and only in areas where proven reserves exist. They have ignored the mineral possibilities in the lesser explored areas of the Tongass, which under this proposed law will always remain unexplored.

(f) With rawal review - this is a most welcome concept to see proposed, but I believe it does not go far enough. Several areas in Southeast Alaska that I am personally familiar with are highly mineralized, have had a long mining history and yet were withdrawn as wilderness. The reports detailing the mineral potential of these areas were buried and ignored by the elements propounding their withdrawal. Uncontrolled mining existed in these areas before wilderness and yet they were still suitable for wilderness, ample evidence that mining and wilderness are not mutually exclusive. Modern mining with all of the controls that exist can be done in a manner that will not compromise wilderness in the long term and still provide the metals we need today. Over seventy-five percent of the federal land in Alaska is already closed to mining.

It has been argued by Thomas Barrett in his pamphlet on self initiation that one impetus for many of the present withdrawals from mineral entry was to eliminate alienation of the land to citizens through patent. If we are to eliminate the patent then

that threat no longer exists and thus the need to exclude mining from these areas. I think it is not unreasonable that we examine all of our lands especially with the new controls on the industry proposed here.

Section 204 - Lands not open to mineral location

This will close even more land to exploration for minerals. The immediate effects will be the loss of the investment dollars and jobs that exploration spending brings to the economy. The full effects upon the nation will not be felt until even more of the minerals we depend upon are produced from foreign sources.

TITLE III - Abandoned Mine Reclamation

This is a good idea and hopefully will work provided that there is a pool of mining claims paying into the fund. For the fund to be successful the mining law must allow mining in this country. As drafted H.R. 918 will not be successful in this regard. If H.R. 918 is amended so that the mining industry can remain successful, then the fund can work. But what happens after the fund cleans up the past practices and reclaims all abandoned mines? Does this fund become a pot full of money looking for a problem or does the industry get some credit for cleaning up its mess, a mess that the entire nation shares in creating in the form of inexpensive metals.

TITLE IV - Fees and Discovery

Section 402 - User fees

Rent should be considered sufficient. This carte blanche invitation for bureaucracies to grow cannot help solve any problems of the nation.

Section 404(c) - Discovery

Here is another case where H.R. 918 is turning an ancient concept in mineral law completely around. Discovery has been defined by the large body of law around it. The prudent man test and the marketability test further restrict and define discovery in such a way as to limit severely the number of new patents issued. The federal lands, at least in Alaska, are not being converted to condominiums under the guise of the mining laws. The requirements to prove discovery today are such that it is virtually impossible for any but the most valuable of mineral deposits to go to patent. However, that patent helps to protect the huge financial risk that a miner must make to discover, define and develop a mineral

deposit. Discovery and patent to the minerals discovered are vital parts of a healthy mineral industry.

One can solve the problem of holding of mining claims prior to discovery by instituting a prospecting site as Alaska has done. The prospecting site gives the claimant exclusive rights to prospect within the confines of the prospecting site yet does not require discovery. A claim cannot be staked without discovery. On Alaska land a claim without discovery can be challenged by any one not just the state. The doctrine of Pedis possessio will not protect a claim without discovery on Alaska land.

(d) Interim period - this section forces a lot of work and expense upon the industry as well as the government. Relocating claims on the ground will be time consuming and seemingly needlessly as the legal description will control not the ground location. In areas where present claims exist sorting out the legal description and claim rights will be a legal and administrative nightmare.

I also have problems with changing the rules of a game after people have risked money, labor and time in providing minerals for our nation. After closely reviewing this bill I believe that, to change in mining law systems and retain a mining industry, requires much more thought in an atmosphere of trying to solve the problems of mining on the public lands not confrontation.

DANIEL K. ROYCE, HAWAII
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United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6028

February 27, 1992

The Honorable Mary Miller
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Mary:

I've reviewed your draft joint resolution on mining law reform and think it's a very good idea. Every year we're facing tougher opposition from those who would like to make wholesale changes to the General Mining Law. It would be helpful to the Alaska delegation and to Congressmen from the Western States if the Alaska State Legislature passed a resolution supporting the current mining law and its philosophy.

For two years now, the U.S. Senate has rejected back door attempts to radically change the law and attempts to remove the ability to patent claims. When we defeated the mining patent moratorium sent to us by the House in the FY 92 Interior Appropriations bill, it was by only a one-vote margin -- there is no question that the debate will continue.

Please send me a final copy of House Joint Resolution No. 35 once it passes. I appreciate your interest in this issue so important to Alaskans.

With best wishes,

Cordially,


TED STEVENS

Bumpers Bill Ready To Go

On February 6, Senator Dale Bumpers sent a 'Dear Colleague' letter to fellow members. It explained his goals for mining law reform, and asked support and co-sponsorship. All will remember the budget debate at the end of the last congress in October, 1990, in which the mining laws were protected from the Bumpers religion only by a concerted effort by a small number of Senators who understood the destructive effect of the Bumpers proposal. The Bumpers proposal was defeated on a point of order. The last word was that Senator Bumpers would return in the next (this) congress with another attempt. He has done so.

Because each point of the proposal is important to understand, the entire summary issued by Senator Bumpers is printed here.

MINING LAW REFORM ACT OF 1991

Summary of Major Provisions

Mineral Claims

-May be located on "mineral lands" (public domain lands open to mineral entry under the 1872 Mining law, excluding the wilderness study areas and areas recommended by agency for wilderness designation)

- Maximum claim size 80 acres
- Claimant files notice of location and \$100 recordation fee with the Secretary
- Claimant has exclusive right of possession of claimed land for mineral activities if claim located, recorded and maintained in accordance with Act
- Claim expires after 20 years if no production in that time period (extension for "bona fide efforts" to produce)

Holding Fee

- Annual payments required to maintain claim
 - \$5/acre, years one through five
 - \$10/acre, years six through ten
 - \$15/acre, years eleven through fifteen
 - \$20/acre, years sixteen through twenty
- Holding fee required ceases when royalty payments for any year exceed the applicable holding fee for that year
- Failure to pay fee nullifies claim

Surface Use Permits

- Replaces millsite claims with permit system
- Annual surface use fee of \$5/acre

Royalty

- Production of minerals from a claim subject to royalty of not less than 5% of gross income from the property
- Definition of gross income keyed to detailed I.R.S. definition of gross income for purposes of depletion allowance calculation

Plans of Operation

- Similar to existing BLM/Forest Service regulations
- No mineral activity causing more than "minimal disturbance to the environment" allowed without approved plan
- Compliance with applicable land use plan, and reclamation and bonding requirement

Land Use Plans

- BLM and Forest Service land use plans must consider mineral activities
- Mineral activities may be prohibited, restricted or conditioned in land use plans subject to guidelines in the Act
- Plans of operations for mining activities must comply with restrictions or conditions imposed on specific areas by land use plan
- Existing land use plans must be amended to conform to requirements in the Act within six years

Reclamation and Bonding

- Secretary shall require reclamation of all surface disturbances "to a condition capable of supporting the same level of productive uses as existed prior to any mineral activities"
- Secretary shall promulgate reclamation standards including standards listed in Act
- Minimum bonds or other financial guarantee of \$10,000/acre

Enforcement

- Inspection of mining operations twice yearly
- Criminal and civil penalties for violations of Act or regulations
- Citizen suit provision

Abandoned Hardrock Mine Reclamation Fund

- Establishes fund for the reclamation of abandoned hardrock mines on federal, state and private lands
- Funded by one third of receipts from royalties, holding fees and surface use fees and receipts from mineral materials sales under the Act of July 31, 1947
- Grants to states with approved programs and to federal agencies

Administration

- Secretary of Agriculture generally has full authority over administration of Act in National Forests, Secretary of Interior for other federal lands
- Implementing regulations required within one year
- Effective date of Act: one year after enactment
- Recordation fees earmarked for administration of Act

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: JIM HANS'N

TITLE:

ADDRESS: PO BOX 246

CITY: NOME

ZIP: 99762

PHONE: 443-5425

BILL NO: HJR 35

SUBJECT: **FEDERAL MINING LAW**

MESSAGE: I AM A LIFELONG "BUSH" RESIDENT OF ALASKA AND FULLY SUPPORT, AS ALL MY FRIENDS DO, YOU EFFORTS TO KEEP MINING ALIVE NOT ONLY FOR ALASKA AND THE NATIONS BEFEFIT, BUT AS A WAY OF LIFE.

POMID: 11061201

DATE: 92/02/27

TIME: 03:12:01

LIONAME: NOME INFORMATION OFFICE

COPIES: REPRESENTATIVES SENATOR

FOSTER

ADAMS

CARNEY

FINKELSTEIN

HUDSON

IVAN

LEMAN

LINCOLN

MOYER

ZAWACKI

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIDSON

NAME: EARL BEISTLINE
TITLE: ALASKA MINERALS COMMISSION
ADDRESS: P.O. BOX 80148
CITY: FAIRBANKS ZIP: 99708
PHONE: 479-6240
BILL NO: HJR 35
SUBJECT: FEDERAL MINING LAW

MESSAGE: ON BEHALF OF THE ALASKA MINERALS COMMISSION I ENDORSE APPROVAL OF HJR 35 - FEDERAL MINING LAW IN ACCORDANCE WITH FINDINGS AND RECOMMENDATION #26 MINING LAW OF 1872, PAGE 8 OF THE 1992 REPORT OF THE COMMISSION. THE REPORT WAS DISTRIBUTED TO ALL MEMBERS OF THE LEGISLATURE. PLEASE LET ME KNOW IF YOU HAVE ANY QUESTIONS ABOUT THE COMMISSION'S RECOMMENDATION. THANK YOU. EOM/CLS

POMID: 07161831
DATE: 92/02/28
TIME: 16:18:31
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March 5, 1992
Common Ground-Alaska
Box 43
Ester, Alaska 99725

Rep. Mark Boyer
House of Representatives
State Capitol
Juneau, AK. 99801-1182

Dear Mark,

I spoke to Kurt by phone yesterday about your support of HJR 35. We at Common Ground-Alaska feel this is misplaced support and not parallel to a vast public opinion that sees the Mining Law of 1872 as failing to address current issues and attitudes.

While the mineral industry is fond of pointing out that the law has been amended over the years it fails to acknowledge that many of the changes left untouched environmental loopholes and tax subsidies the industry has been enjoying for years. For instance, did you know that precious metals is the only extractive, non-renewable industry that pay no royalty to the federal government? Coal, gas, and oil all pay royalties for the right to produce. At a time of huge federal deficits why are precious metals still taking a ride on the taxpayer?

Now, more than ever before the Alaska Legislature needs to consider the economic and environmental advantages the Mining Law of 1872 gives the industry. Many of them are outmoded, archaic, and not responsive to public attitudes. The reform of the 1872 is legitimate and long overdue.

Enclosed please find local and national information that offers other points of view to HJR 35. We urge you to reconsider your support of this resolution.

Sincerely,

Douglas Yates
Staff to the Board of Directors

cc Rep. Koponen
Rep. Moyer
Rep Davidson
Sen. Craft

COMMON GROUND-ALASKA

A JOURNAL OF LAND USE AND CITIZEN ACTION

VOL. 2 # 1

BOX 43 ESTER, ALASKA

SPRING 1991

Spring Greetings!

The snow is off, the rivers are open, and we'd like to announce this expanded issue of Common Ground is the result, in part, of a generous \$2,000 grant from the Alaska Conservation Foundation. ACF recognized our work as watchdog of local miners and the regulatory agencies that provide legal oversight as a vital component of community health and safety. The grant will also help us provide:

Research and Liaison: increased interaction with the Northern Alaska Environmental Center, Sierra Club Legal Defense Fund, and the Mineral Policy Center.

Advocacy Activities with Policymakers: providing input on statewide reclamation regulations and reform of the 1872 Mining Act.

Education: working towards more accurate and in depth reporting of mineral extraction issues in our local media; expanding our newsletter.

Consensus Building: strengthening and expanding our communication with miners.

Membership Development and Advocacy: increasing the numbers and effectiveness of our membership.

In an era when the new administration in Juneau is openly in favor of large commercial development and when oversight agencies like the Department of Environmental Conservation (DEC) remains underfunded and understaffed, an active citizen initiative can help to fill the gap. Common Ground-Alaska intends remain an advocate for community safety, sustainable economic development, and a miner's canary for developments with casual operating methods.

Membership Drive

The publication of this issue of Common Ground marks the start of a membership campaign. In order to serve you better we need to increase active membership. The Alaska Conservation Foundation has agreed to match dollar-for-dollar all funds we raise through increased membership. This matching campaign will double your commitment to Common Ground-Alaska. Monies are used for printing and mailing costs, aerial photography, staff salary, and liaison with Juneau, Anchorage, and Washington, D.C.

Use this special opportunity to strengthen Common Ground-Alaska as never before. In this time of shrinking budgets we cannot expect government agencies to investigate the safety of all development schemes. As citizens we must support each other. Use the membership form in this newsletter to renew your commitment—you'll be doubling your money!

Public policy in natural resources is too important to be left to the so-called experts. Take a special interest, recruit a friend or a neighbor, your perspective and energy can make a difference.

The Citigold Mine on Ester Dome

The saga of this Vancouver, B.C.-controlled cyanide heap leach mine continues. Common Ground-Alaska and other residents downstream from the site were particularly concerned with ground water contamination and the apparent casual attitude exhibited by the operators. Last fall, prompted by continued pressure from Common Ground, DEC launched an investigation and the operators were cited with a Notice of Violation (NOV).

Subsequent investigation, in part prompted by allegations from a previous employee which involved inadequate liner installation for a pad built in 1987, proved the liner was not installed in an environmentally sound manner nor in accordance with the mine's operating proposal.

The operators went to court to remove DEC from oversight of the mine. Judge Savell, to his credit, dismissed their suit as unwarranted. The operators of the mine complained to Governor Hickel and tried to remove members of the local Attorney General's office.

The case was moving toward an adjudicatory hearing when Citigold filed a motion to dismiss last month. The original management personnel have been replaced by a new team called Gateway from Salt Lake City, Utah. A paper shuffle and share buy-out forced out the previous management, but the site is still controlled by Citigold's parent company, La Teko of Vancouver, B.C.

For evading its responsibility to operate in a safe and prudent manner, Citigold must pay court costs and investigation expenses in the amount \$23,982.29.

Heavy winter snow, ice, insufficient engineering and climatic data, and lack of experience at this latitude forced Gateway to apply for emergency permits which gave them permission to make controlled releases of the contents of the mine's holding ponds. Threatened by unseasonable snow melt and the possibility of a "rain on snow event" that could lead to a catastrophic failure of a pond dike, the mine and DEC were ready to release unneutralized cyanide solution downslope.

Cost cutting practices, casual attitudes toward local residents, and inadequate data gathering by the original managers came very close to producing inexcusable destruction of part of the Ester Dome watershed.

Gateway has assured Common Ground-Alaska and DEC that Citigold has learned its lesson and in the future will abide by all prudent recommendations and requirements for the safe operation of the mine. However, DEC and the Attorney General remain interested in the disturbing question of the integrity of the liners and the state of the soils under a number of the heap pads on the site. The aquifer may have been contaminated. The AG's office has asked Gateway to discuss with DEC a cooperative investigation of these concerns. Three new monitoring wells will be drilled to help answer this question.

Reform of the 1872 Mining Law

The heart of the controversial 1872 Mining Law has remained virtually unchanged since the time of President Grant. This 19th century law is still guiding mineral development as we approach the 21st century. It has resulted in aggressive land speculation at the public's expense, lost tax revenue (miners pay NO royalty), and environmental damage that now must be reclaimed at taxpayer expense.

Highlights of this antiquated law:

- Anyone who discovers a "valuable mineral" on most public domain has an automatic right to claim it and mine it, no matter what other values exist on the site.
- Mineral corporations pay no royalty for the ores removed while oil and gas extraction pays the federal government 12.5 per cent of its proceeds.
- The holder of a claim which proves to contain a "valuable mineral" may purchase clear title to the land for \$5.00 per acre or less.
- Yearly assessment work (often nothing more than running a blade through the claim) need only total \$100.00 to keep unpatented land tied up indefinitely.

In a recent interview with staff at the Bureau of Land Management (BLM), Fairbanks, we learned that a miner is only allowed to live on a mining claim if he/she is performing meaningful mining activity or can prove that his/her absence would jeopardize private property.

Residing on the claim, without justification, is considered "unauthorized occupancy". BLM said this is extremely difficult to enforce because only certified mineral examiners can determine whether mining activity is meaningful. There are no mineral examiners in this district and there are only two in Alaska. Due to this lack of personnel, no on-site inspections for unauthorized occupancy have been performed for a number of years.

We learned that BLM defines "valuable mineral" as any profit over the expense of extracting the mineral. In other words, if it is determined that it costs the miner \$1,000 to gross \$1,000.05, then that land has "valuable mineralization" and can be sold to the miner for as little as \$5.00 an acre.

This feature of the 1872 Mining Law has resulted in legendary abuse. The General Accounting Office (GAO), the investigative branch of Congress, has determined that many miners are actually land speculators who have taken undue advantage of this antiquated federal provision. Once they gain title, these speculators resale the claims at great profit to housing contractors, resort developers, shopping malls, or even back to the government for airports.

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COMMON GROUND-ALASKA
BOX 43
ESTER, ALASKA 99725

Reform packages have been introduced in the Senate (S. 433) by Senator Dale Bumpers (D-AR), and in the House (HR 918) by Representative Nick Rahall (D-WV). This legislation deserves wide support. Write a letter to the editor of the Daily News-Miner or contact Alaska's Congressional delegation. But don't expect a lot of support from Ted Stevens. In the last session of Congress Stevens pulled some last minute strings to defeat a reform of the 1872 by a very narrow margin.

For more detailed information of the reform of the 1872 contact the Mineral Policy Center, 1325 Massachusetts Ave. N.W., Room 550, Washington, D.C. 20005

Congressional Hearing in Fairbanks on the 1872 Mining Law

West Virginia Congressman Nick Rahall is travelling to Alaska to collect public testimony on the need for reform of the 1872 Mining Law. His delegation will listen to witnesses on 8 am, Saturday, May 25, at Schiabe Auditorium on the University of Alaska Fairbanks campus.

Individuals unable to testify are encouraged to submit written statements about the abuses of the 1872. Everyone's comments are valuable.

A dissenting group of miners, pleased with the status quo, plan to stage a rally in support of the continued free ride they have enjoyed at the public expense for over 118 years.

Leadership Workshop with President of Mineral Policy Center

Philip Hocker, President of the MPC, will conduct an issues and advocacy workshop on the reform of the 1872 Mining Law. The workshop will run from 5-7 pm on May 24. This is an excellent opportunity to learn first-hand the details and strategy involved in the reform of this outdated and abusive giveaway.

Hocker has extensive knowledge of the need for reform. He has developed a wide network of grass-roots activists and his comments and insights will offer valuable information about how Alaskans can help pass this important legislation. For further information on this workshop call Nancy Murphy, 455-6557.

Board Members, Common Ground-Alaska

Dick Gumm, 479-5004
Nancy Murphy, 455-6557
Dave Musgrave, 455-6557
Mike Musick, 479-5336
Andy Reynolds, 479-5958
Doug Yates, 479-8300

EarthDay-May 19, 1991 11am to 7pm, Tanana Valley Fairgrounds

Although this year's event wasn't the huge international celebration that occurred in April last year, Fairbanks will mark the occasion with a community gathering at the Fairgrounds.

Common Ground-Alaska's booth will present a photo display of the effects of mining development on local watersheds. A special feature will be an opportunity to view details of a cyanide heap leach operation.

Members of the board of directors will staff the booth along with citizen volunteers. Use this opportunity to get acquainted with the people who invest their time and commitment to protecting our land and water values.

A primary purpose of our participation in Earth Day is to enlist new members. The politics of natural resource extraction, protection of the downstream environment, and the maintenance of residential property values (tangible and intangible) concerns each of us.

Consensus Meetings with Mineral Industry

Perhaps the most encouraging news to report is the formalization of a borough commission under the FNSB Planning Department. After eight months of meetings held at the Community Hall in Ester, Common Ground-Alaska convinced the industry delegation of the need for a public forum to raise issues of conflict while searching for areas of resolution.

Facilitated throughout by borough planner Bernardo Hernandez, our final meeting was May 8, 1991. The group will be called the Mining and Residential Mediation Commission. It will consist of four members of the mineral industry and four members of the residential community and will meet at least four times a year.

With an even numbered commission it's immediately apparent that voting on issues of conflict will not solve problems. The structure of this commission demands a new way of approaching old conflicts. Since the mission of the group is to enhance dialogue between areas of interest, a consensus approach has been determined the best available avenue to find solutions to common problems.

Consensus is based on the belief that each person has some part of the truth and no one has all of it, no matter how we would like to believe so, and on a respect for all persons involved in the decision that is being considered.

The Society of Friends (Quakers) have used this process for over 300 years, calling it "seeking unity or gathering a sense of the meeting". Early Native Americans, and many present-day Alaska villages, use this process of consensus to reach community decisions.

Conflicts between miners and residents will continue, but we now have a mechanism to air the problems before a crisis develops. Consensus is not perfect, but it may provide an opportunity to build community rather than divide it.

THE DENVER POST

Voice of the Rocky Mountain Empire

★ Final Edition / 25 cents
35 cents in Designated Areas

Mine's toxic leaks render river lifeless

Despite fines, promises, cyanide flowing into Alamosa River and downstream

By Kit Minciller
Denver Post Staff Writer

Cyanide-laced water from a mine near Wolf Creek Pass has rendered aquatic life in 17 miles of the Alamosa River and the Terrace Reservoir lifeless. It may have seeped downstream to the Rio Grande, say state and federal officials.

The leaks from Summitville Consolidated Mining Co. continue, despite a \$100,000

fine levied against the company this year, agreements to take remedial actions, closure of the once-popular fishing reservoir after a massive fish kill and complaints from downstream users.

"We went up to the mine last month to investigate reports of an environmental disaster and we found an environmental disaster," said Mark Hughes, an attorney with the Sierra Club's Legal Defense Fund.

"I was appalled. There seemed to be substantial leaks and runoff, and the mine operators didn't seem to know where it came from or what might be in it."

The sprawling open-pit mine is 11,700 feet above sea level and about 16 air miles southeast of the summit of Wolf Creek Pass in southern Colorado.

A Colorado Department of Health video of the seepage showed brilliant blue sludge and water — ranging in color from

orange to yellow to molasses — leaking into natural waterways from the mine site last summer.

"This ought to be on the 6 o'clock news," observed the filmmaker on the unedited video.

The company, a wholly owned subsidiary of Galactic Resources Inc. of Canada, is using 40 million to 50 million gallons of

Please see MINE on 7A

Monday, November 11, 1991

Gold mine's leaks deadly for aquatic life

MINE from Page 1A

Cyanide-laced water in the 45-acre leach pad leaching process to extract gold from several million tons of ore, said mine general manager Bill Williams.

"We've got problems, there is no question about that," Williams readily admits, explaining that about 100 gallons of water a minute are leaking from the leach pad.

An elaborate system of ditches and ponds is designed to catch the leaks and either pump the fluids back to the leach pad, or treat them and then spray the treated water on the landscape.

However, under an agreement between the company, state health department and Mined Land Reclamation Board, the company ceased landscaping applications on Oct. 30.

"At this point, there isn't any acid runoff from the heap," Williams said. "We feel we are on the right track, and we are going to clean this place up."

The company expects to continue leaching operations at least another six months, though it finished mining operations this fall.

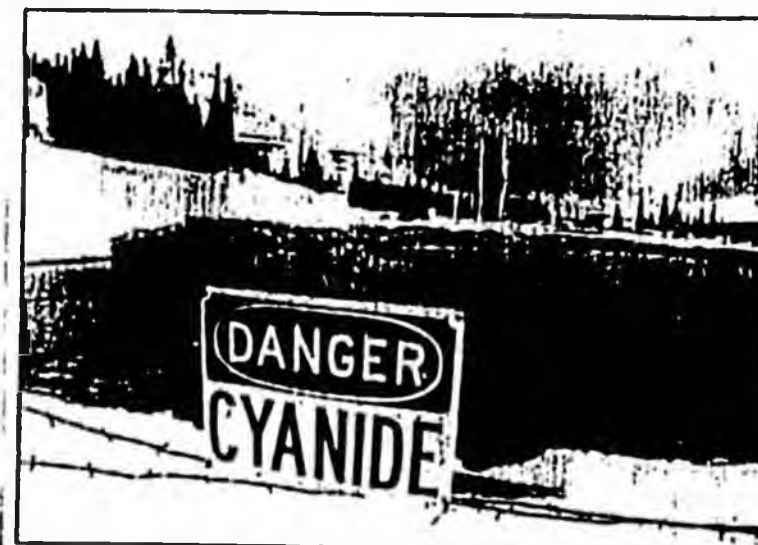
State game officials stopped stocking the Terrace Reservoir with 15,000 trout fingerlings annually after a massive cyanide leak rolled down Whiteman Creek into

all life in 17 miles of the river and in the reservoir, which is south of Del Norte, said Jerry Apker of the division of wildlife.

The fish kill extended 7 or 8 miles below the reservoir, killing fish in at least one private farm pond, and may have reached the Rio Grande.

The first reported fish kill attributed to the mine occurred in 1986, shortly after the operation began. The most recent was six weeks ago, when 500 to 1,000 gallons of the cyanide-laced water spilled into Whiteman Creek.

THE DENVER POST



The Denver Post / Karl Gehlbach
DEADLY WATER: A sign warns of the danger at one of the Summitville Consolidated Mining Co.'s holding ponds.