

**ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672**

**8977 SENATE RESOURCES**

preservation of traditional recreational opportunities, this one issue takes most of our time and energy and has not been an easy promise to keep to my members.

Our constitutional rights to access state land by way of the navigable waters, is increasingly under attack by **The Big Green Machine**, The Alaska Center for the Environment, The Wilderness Society, The Wildlife Alliances, The Autobaun Society, and every anti everything group, has a office in Alaska and with the backing of there multi-million dollar head quarters they have manipulated and or dictated how we Alaskan residents will recreate. These groups with their letters to the editor of the Daily News, their paid lobbyist and attorneys have learned all to well how to manipulate the letter of the law and ignore the intent. If a management plan says a commissioner may restrict, they convince the bureaucrats it means will restrict.

I've seen this happen first hand in the Six Rivers Management Plan for the Mat-Su Valley. I was at the teleconference on February 12<sup>th</sup> 1996 and listened to the director of DNR brag about the Six River Plan and how the legislature had two years to take the access restriction out.

I was there, the restriction should not have been there in the first place, and in the second place Rep. Cliff Davidson sat on the plan and would not give it a hearing or let it out of his committee to be voted on..

Now it is all to common to see the Boards of Game and Fish being used to limit our ways and means of access. Because of this latest threat on equal access I would like to see the commissioner of fish and game and the boards of fish and game be included in this bill.

The boards of fish and game have started trying to solve social issues. Geographically different classes of people are being restricted from an area for no other reason then they live down river and the up river people wanted exclusive rights to the land ,water, and game in their area. The Board of Game accommodated them by putting a horse power restriction on the river so as not to allow the down river people enough horse power to make the trip safely. This was done in an area where the moose population was healthy an growing.

The A.B.A. has always supported the multiple use designation for all the land and waters of Alaska with the exception of the reasons I gave earlier. The natural ruggedness of this state has and will continue to provide a wide range of recreational experience for all outdoors men (and woman), and it doesn't need to be micromanaged by DNR or ADF&G.



George Piaskowski  
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FEB 12 1996

P.O. BOX 210427 ANCHORAGE, AK 99521-0427

February 12, 1996

Re SB230

The Alaska State Snowmobile Association supports the intent of SB 230. Much controversy has arisen regarding the access to state land for traditional recreational use. We feel this legislation is very important now to protect future traditional recreational land access which can only assist in promoting recreational tourism in our state by local, regional, and out of state recreationists.

Motorized access allows people of all ages and physical abilities to participate in the enjoyment of outdoor recreation. It enhances universal access and could enhance the TRAAK program starting here in Alaska.

ASSA supports SB230 to protect all types of access to state lands.

Please include our letter in public testimony.

Sincerely,

Glenda Smith  
President



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

February 12, 1996

Honorable Loren Leman  
Chairman  
Senate Resources Committee  
Capitol Building  
Juneau, AK 99801

RE: Senate Bill 230, Restrictions to Traditional Access

Dear Senator Leman,

Thank you for the opportunity to comment on Senate Bill 230 which addresses the need to protect traditional means of access for recreational uses. We have reviewed this bill and support it with a minor change.

The change is needed to allow the commissioner to restrict access to an area that is part of a mine or other industrial site where there is a concern for public safety.

The change we suggest is in Section 2 where a new sub-section (d) (3) should be added as follows:

- (d) The commissioner may not....or prohibition is
- (1) temporary in nature and effectively cumulatively less than eight months in a three-year period; or
  - (2) authorized by act of the legislature; or
  - (3) required for protection of public safety.

Without this change it may be impossible to restrict access into areas that could be dangerous to the general public. Water diversion ditches, surface mine pits, power cables for pumps or other equipment, fly rock from blasting, etc. are all potential dangers to the public. Also, federal law requires that the mine control access and keep the public from potentially dangerous situations.

We feel the above proposed addition would answer the question of public safety and still preserve the intent of the bill. Thank you for the opportunity to comment.

Sincerely,

Steven C. Boroll, P.E.  
Executive Director  
cc: Senator Drue Pearco

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# Resource Development Council for Alaska, Inc.

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Resource Development Council, Inc.

Testimony on SB 230

Presented to Senate Resources Committee

February 12, 1996

Good afternoon. My name is Carl Portman, Communications Director for the Resource Development Council. Thank you for the opportunity to testify on SB 230. RDC strongly supports the intent of SB 230 and commends Senator Pearce for her initiative in moving this bill forward.

Access to Alaska's vast federal and state lands is a major priority of RDC. It is imperative Alaska retain the widest possible range of multiple uses on its lands and preserve as many options as possible for access, especially traditional access for recreation and other uses.

Access is a paramount concern to RDC in light of the fact that so much of Alaska's federal and State conservation units are already managed for the preservation of backcountry qualities for those who demand solitude and untracked wilderness experiences. Alaska's parks, both state and federal, can contribute a great deal to tourism and local recreational needs, but only if reasonable access is permitted. Tourism demands access and infrastructure to accommodate growing numbers of visitors, and these visitors, as well as local residents, demand a wide variety of opportunities, including helicopter flightseeing and landings. Statistics show air access is among the most popular and highest rated activities for Alaskans and their visitors. Air access quite often affords the only viable access to Alaska's largely inaccessible, roadless land base for people of all physical abilities and for those with a limited time margin.

Other traditional forms of access, including snowmobile and boat, are also an essential element in Alaska's unique access equation. Alaskans are very defensive of their rights to access the vast public lands of this northern state.

SB 230 was introduced to protect the rights of Alaskans to access state land and water for recreation use. In a time when the federal government continues to restrict and prohibit access to many areas of the state, the Legislature needs to ensure that decisions to restrict access on State lands are made in a responsible, fair and well represented process.



Page 2/ RDC testimony on SB 230

February 12, 1996

Alaskans are presently losing their right to traditional access on some State land without appropriate notification and justification. Non-restricted areas of our state are being closed without proper oversight of the Legislature.

Decisions to deny access for recreational use have always been made by the Legislature, but in some instances now, the management and authority to restrict and prohibit uses on state land are being transferred from the Division of Lands to the Division of Parks and Outdoor Recreation.




RDC supports legislative approval for any restrictions to traditional use that occur under Title 38. RDC also supports legislative approval for any expansion of park land that restricts or prohibits recreational use.

The intent of this legislation is to make the process of restrictions and prohibitions more open to the people of Alaska. SB 230 would help ensure that all Alaskans would have proper representation by their elected officials in cases involving restrictions on traditional recreational access. SB 230 would keep important access decisions at the legislative level where they belong.

Thank you for this opportunity to testify. RDC will continue to monitor this bill as it evolves and will be happy to provide further comment on the measure.



Figure 15  
BOUNDARY  
MODIFICATIONS

- To become:
-  State Park
  -  National Park
  -  River Bank Buffer



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ration that qualifies for a land conveyance under 43 U.S.C. 1613(h)(3), as amended, has filed a valid selection application with the United States under 43 U.S.C. 1601 — 1641, as amended, if the selection of the corporation or group has not been rejected or relinquished.

(c) Subsection (b) of this section may not be construed to limit the director in the exercise of authority granted by AS 38.05.035(a)(12). (§ 1 art IX ch 169 SLA 1959; am § 1 ch 123 SLA 1961; am § 3 ch 96 SLA 1966; am § 14 ch 93 SLA 1984; am § 1 ch 47 SLA 1994)

**Effect of amendments.** — The 1994 amendment, effective May 24, 1994, added subsections (b) and (c).

**Editor's notes.** — Under § 3, ch. 47, SLA 1994, subsections (b) and (c) "are retroactive to April 14, 1966, and apply to locations made under AS 38.05.185 — 38.05.275 or in the manner described in AS 27.10 on and after that date."

Section 2, ch. 47, SLA 1994 provides: "Notwithstanding the exclusion of land

from the definition of 'state selected land' by AS 38.05.275(b), added by sec. 1 of this Act, a mining location that was made on that land under AS 38.05.185 — 38.05.275 or in the manner described in AS 27.10 on or after April 14, 1966, and before May 24, 1994 retains its validity, if any, if the selection of the land by all corporations or groups eligible to make a selection under 43 U.S.C. 1601 — 1641 is rejected or relinquished."

**Article 11. Classification of Land.**

**Section 300. Classification of land**

**Sec. 38.05.300. Classification of land.** (a) The commissioner shall classify for surface use land in areas considered necessary and proper. This section does not prevent reclassification of land where the public interest warrants reclassification, nor does it preclude multiple purpose use of land whenever different uses are compatible. If the area involved contains more than 640 contiguous acres, state land, water, or land and water area may not, except by act of the state legislature, (1) be closed to multiple purpose use, or (2) be otherwise classified by the commissioner so that mining, mineral entry or location, mineral prospecting, or mineral leasing is precluded or is designated an incompatible use, except when the classification is necessary for a land disposal or exchange or is for the development of utility or transportation corridors or projects or similar projects or infrastructure, or except as allowed under (c) of this section.

(b) *(Repealed. § 35 ch 126 SLA 1994.)*

(c) Notwithstanding (a)(2) of this section, if the commissioner considers it necessary and proper, the commissioner may provide by order for an interim classification that precludes, or designates as an incompatible use, mining, mineral entry or location, mineral prospecting, or mineral leasing. Within 10 days after the convening of each regular legislative session, the commissioner shall transmit to the legislature for consideration all the interim classification orders issued under this subsection during the preceding calendar year. Unless the legislature

approves by law an interim classification contained in an order transmitted under this subsection, that order expires on the 90th day of that legislative session or upon adjournment of that session, whichever occurs first. Approval by the legislature of an interim classification satisfies the requirement of (a) of this section for an act of the state legislature. (§ 1 art III ch 169 SLA 1959; am § 2 ch 31 SLA 1964; am §§ 33, 34 ch 85 SLA 1979; am § 40 ch 152 SLA 1984; am §§ 2, 3 ch 52 SLA 1993; am § 35 ch 126 SLA 1994)

**Effect of amendments.** — The 1993 amendment, effective September 1, 1993, rewrote subsection (a) and added subsection (c).

The 1994 amendment, effective July 1, 1994, repealed subsection (b), relating to the commissioner's annual written report describing the location of all classifica-

tions of state land made under subsection (a) of this section.

**Editor's notes.** — Section 4, ch. 52, SLA 1993 provides that paragraph (a)(2) and subsection (c) of this section "apply to classifications made after September 1, 1993."

**Article 13. Miscellaneous Provisions.**

**Section**  
800. (Repealed)  
801. Management of mental health trust land  
810. Public and charitable use

**Section**  
825. Conveyance of tide and submerged land to municipalities  
860. Deposits

*Sec. 38.05.800. Reconstitution and administration of mental health land trust. (Repealed, § 39 ch 5 FSSLA 1994.)*

**Sec. 38.05.801. Management of mental health trust land.**  
(a) Mental health trust land shall be managed consistent with the trust principles imposed on the state by the Alaska Mental Health Enabling Act, P.L. 84-830, 70 Stat. 709 (1956).

(b) Subject to (a) of this section, the department

(1) shall manage mental health trust land under those provisions of law applicable to other state land;

(2) may exchange other state land for mental health trust land under the procedures set out in AS 38.50; and

(3) may correct errors or omissions in the legal descriptions of mental health trust land.

(c) The commissioner shall adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this section. The regulations adopted under this subsection must, at a minimum, address

(1) maintenance of the trust land base;

(2) management for the benefit of the trust;

(3) management for long-term sustained yield of products from the land; and

(4) management for multiple use of trust land. (§ 17 ch 5 FSSLA 1994)

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history of use for commerce, recreation, or transportation. (§ 5 ch 181 SLA 1978; am § 7 ch 113 SLA 1981; am § 13 ch 152 SLA 1984)

**Sec. 38.04.058. Restrictions on easement or right-of-way use.** The director may, under terms agreed to in writing by a grantee, lessee, or interest holder of state land, restrict the use of an easement or right-of-way reserved under AS 38.04.050, 38.04.055 or other law in order to protect public safety or property. (§ 14 ch 152 SLA 1984)

### Article 3. Inventory, Planning, and Classification.

#### Section

60. Inventory

65. Land use planning and classification

#### Section

70. Management categories

**Sec. 38.04.060. Inventory.** (a) The commissioner shall prepare and maintain on a continuing basis an inventory of all state land and water and their resource and other values, giving priority to areas of potential settlement, economic development, and critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.

(b) The commissioner's inventory must include land and water under interagency assignment of land management authority and land and water proposed for such an assignment. That land and water must be reviewed at regular intervals to analyze current and proposed uses as these uses relate to alternative uses for all or part of the land and to determine the uses which best provide for the public interest.

(c) As funds and manpower are made available, the commissioner shall provide local and federal governments and major private land-owners with data from the inventory for the purpose of planning and managing the uses of land in proximity to state land. (§ 5 ch 181 SLA 1978)

#### **Sec. 38.04.065. Land use planning and classification.**

(a) Except as provided in (d) and (h) of this section, the commissioner shall, with local governmental and public involvement under AS 38.05.945, adopt, maintain, and, when appropriate, revise regional land use plans that provide for the use and management of state-owned land.

(b) In the adoption and revision of regional and site-specific land use plans, the commissioner shall

(1) use and observe the principles of multiple use and sustained yield:

(2) consider physical, economic, and social factors affecting the area and involve other agencies and the public in achieving a systematic interdisciplinary approach:

**Sec. 38.05.290. Selection practice.** (a) The selection of grant, lieu and indemnity land shall conform to this chapter and the policy, orders and regulations adopted by the commissioner. The commissioner shall give preference of selection to the land which will provide the maximum benefits to the people of the state.

(b) Consistent with the best interests of the state, in the selection of general grant land it is the policy of the state to make available the maximum land area from which municipalities may fulfill land entitlements under AS 29.65 or former AS 29.18.201 — 29.18.213. (§ 1 art XI ch 169 SLA 1959; am § 4 ch 180 SLA 1978; am § 58 ch 74 SLA 1985)

**Effect of amendments.** — The 1985 amendment inserted "AS 29.65 or former" near the end of subsection (b). **Collateral references.** — 63A Am. Jur. 2d, Public Lands, §§ 113 to 121.

**Article 10. Parks and Recreation Areas.**

**Section**  
295. Parks and recreation areas

**Sec. 38.05.295. Parks and recreation areas.** The commissioner shall establish a policy and adopt regulations by which parks and recreation areas, including public scenic overlooks and cultural sites, shall be developed and managed in a manner that will best serve the interests of the people of the state. The commissioner may classify public land as parks, scenic overlooks, cultural sites and recreation areas as long as the general intent of this chapter is maintained. (§ 1 art XII ch 169 SLA 1959)

**Collateral references.** — 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, § 1 et seq.; 63A Am. Jur. 2d, Public Lands, § 1 et seq. **Uses to which park property may be devoted:** power of legislature or state officers, 18 ALR 1266; 63 ALR 484; 144 ALR 486.

73A C.J.S., Public Lands, § 1 et seq.

**Article 11. Classification of Land.**

**Section**  
300. Classification of land  
321. Restriction on sale, lease or other disposal of agricultural land

**Sec. 38.05.300. Classification of land.** (a) The commissioner shall classify for surface use land in areas considered necessary and proper. This section does not prevent reclassification of land where the public interest warrants reclassification, nor does it preclude multiple purpose use of land whenever different uses are compatible. State land, water, or land and water area may not, except by act of the state

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**Collateral references.** — 59 Am. Jur. 2d, Parks, Squares and Playgrounds, §§ 1-15; 63A Am. Jur. 2d, Public Lands, § 16.

11A C.J.S., States, §§ 138, 145-150.  
 Statutes relating to establishment or administration of parks as encroachment on right of local self-government. 59 ALR 228.

Construction of highway through park as violation of use to which park property may be devoted. 60 ALR3d 581.

State's liability for personal injuries from criminal attacks in state park. 59 ALR4th 1236.

**Sec. 41.21.010. Purpose.** It is the purpose of AS 41.21.010 — 41.21.040 to foster the growth and development of a system of parks and recreational facilities and opportunities in the state, for the general health, welfare, education, and enjoyment of its citizens and for the attraction of visitors to the state. (§ 1 ch 158 SLA 1959)

**Revisor's notes.** — Formerly AS 41.20.010. Renumbered in 1983.

**Sec. 41.21.020. Duties of Department of Natural Resources.**

(a) The department shall

(1) develop a continuing plan for the conservation and maximum use in the public interest of the scenic, historic, archaeological, scientific, biological, and recreational resources of the state;

(2) plan for and develop a system of state parks and recreational facilities, to be established as the legislature authorizes and directs;

(3) acquire by gift, purchase, or transfer from state or federal agencies, or from individuals, corporations, partnerships or associations, land necessary, suitable and proper for roadside, picnic, recreational, or park purposes;

(4) develop, manage, and maintain state parks and recreational areas;

(5) provide for the acquisition, care, management, supervision, improvement, development, extension, and maintenance of public recreational land, and make necessary arrangements, contracts, or commitments for the improvement and development of land acquired under AS 41.21.010 — 41.21.040; contracting for improvement and development under this paragraph is governed by AS 36.30 (State Procurement Code);

(6) adopt, in accordance with this section and AS 44.62 (Administrative Procedure Act), regulations governing the use and designating incompatible uses within the boundaries of state park and recreational areas to protect the property and to preserve the peace;

(7) cooperate with the United States and its agencies and local subdivisions of the state to secure the effective supervision, improvement, development, extension, and maintenance of state parks, state monuments, state historical areas, and state recreational areas, and secure agreements or contracts for the purpose of AS 41.21.010 — 41.21.040;

(8) encourage the organization of state public park and recreational activities in the local political subdivisions of the state;

(9) provide for consulting service designed to develop local park and recreation facilities and programs;

(10) provide clearinghouse services for other state agencies concerned with park and recreation matters;

(11) perform other duties as are prescribed by executive order or by law;

(12) maintain memorials to Alaska veterans located in state parks; and

(13) adopt, in accordance with AS 44.62 (Administrative Procedure Act), regulations governing the use of the Chena River State Recreation Area and designating incompatible uses within the boundaries of the Chena River State Recreation Area in accordance with AS 41.21.490.

(b) In adopting regulations under (a)(6) of this section, the department shall consider whether the use of dogs, horses, and other animals for packing gear, pulling sleds, or for other recreational use is a compatible use within a state park or recreational area.

(c) The department may accept cash and other donations from public or private sources to assist and support the department in carrying out the purposes of this chapter. (§ 2 ch 158 SLA 1959; am § 1 ch 233 SLA 1970; am § 3 ch 30 SLA 1981; am §§ 1, 2 ch 78 SLA 1981; am § 1 ch 16 SLA 1984; am § 40 ch 106 SLA 1986; am § 19 ch 2 FSSLA 1992; am § 74 ch 63 SLA 1993)

**Revisor's notes.** — Formerly AS 41.20.020. Renumbered in 1983. Paragraph (a)(13) was enacted as (a)(12) and renumbered in 1981. The present second sentence of AS 41.21.490 was enacted as a part of (a)(13) and transferred in 1981, with minor word changes in (a)(13) of this section. In 1984, "a compatible use" was substituted for "compatible" in subsection (b) to correct a manifest error in ch. 16, SLA 1984.

**Cross references.** — For power of the department of military affairs to construct memorials to veterans, see AS 44.35.030.

**Effect of amendments.** — The 1992

amendment, effective July 1, 1992, in subsection (a), substituted "develop, manage, and maintain" for "control, develop and maintain" in paragraph (4) and substituted "management" for "control" in paragraph (5).

The 1993 amendment, effective January 1, 1993, added subsection (c).

**Editor's notes.** — Section 87, ch. 63, SLA 1993 provides "If any section of this bill is found to violate the single subject rule it is severed from the rest of the bill."

**Collateral references.** — Use to which park property may be devoted. 18 ALR 1266; 63 ALR 484; 144 ALR 486.

**Sec. 41.21.022. Discharge of firearms.** The discharge of firearms during lawful hunting, trapping, and fishing is permitted within the boundaries of: (1) Caines Head State Recreation Area; (2) Chena River State Recreation Area; (3) Chugach State Park; (4) Denali State Park; (5) Kachemak Bay State Park; (6) Kachemak Bay State Wilderness Park; (7) Marine Parks established in AS 41.21.300 — 41.21.306; (8) Quartz Lake State Recreation Area; and (9) Wood-Tikchik State Park.

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*Sec. 41.21.143. Discharge of firearms. [Repealed. § 2 ch 126 SLA 1984.]*

**Sec. 41.21.150. Purpose of AS 41.21.150 — 41.21.152.** The purpose of AS 41.21.150 — 41.21.152 is to restrict state-owned land and water described in AS 41.21.151 to use as a state park. Under AS 38.05.300, state land, water, or land and water containing more than 640 acres may be closed to multiple use only by act of the legislature. Because the area described in AS 41.21.151 exceeds 640 acres, AS 41.21.150 — 41.21.152 are intended to provide for the closing of the described land and water to multiple use in conformity with AS 38.05.300 and its designation as a special purpose area in accord with art. VIII, § 7 of the Constitution of the State of Alaska. (§ 2 ch 233 SLA 1970)

**Revisor's notes.** — Formerly AS 41.20.300. Renumbered in 1983.

**Sec. 41.21.151. Denali State Park established.** The state-owned land and water and that acquired in the future by the state lying within the parcels described in this section are designated as the Denali State Park. This land and water is reserved from all uses incompatible with its primary function as park area. Land covered by AS 41.21.150 — 41.21.152 is that within the following described parcels:

(1) Township 29N Range 6W, Range 5W, and that portion of Range 4W lying north and west of the Alaska Railroad right-of-way; Township 30N Range 5W and that portion of Range 3W and 4W lying north and west of the Alaska Railroad right-of-way; Township 31N Range 5W, Range 4W and that portion of Range 3W and Range 2W lying north and west of the Alaska Railroad right-of-way; Township 32N Range 4W, Range 3W and that portion of Range 2W lying north and west of the Alaska Railroad right-of-way; and Township 33N Range 4W, Range 3W and that portion of Range 2W lying west of the Alaska Railroad right-of-way, all in the Seward Meridian;

(2) Township 29N, Range 7W; Sections 1-27 and 34-36, Township 29N, Range 8W; containing approximately 42,240 acres, all in the Seward Meridian. (§ 2 ch 233 SLA 1970; am § 1 ch 135 SLA 1976)

**Revisor's notes.** — Formerly AS 41.20.310. Renumbered in 1983.

**Cross references.** — For authority of commission to adopt regulations designating incompatible uses, see AS

41.21.020(6); for legislative declaration that certain electrical transmission line is a compatible use in Denali State Park, see § 14, ch 118, SLA 1993.

# Alaska State Legislature



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**Drue Pearce**  
*President of the Senate*

## **Sponsor Statement** **SB 230**

### **"Legislative Approval To Restrict Traditional Recreational Uses"**

SB 230 was introduced to protect Alaskans' right to access state land and water for recreational use. In a time when the Federal government continues to restrict and prohibit Alaskans' access to many areas of the State, we, the state government, need to ensure that decisions to restrict access on land we control are made in a responsible, fair, and well represented process.

Alaskans are presently losing their right to traditional recreational use on some state land and park land without appropriate notification and justification. Citizens believe that the public comment process is not being fairly administered and all user groups are not being represented. In some instances, the management and authority to restrict and prohibit uses on state land are being transferred from the Division of Lands to the Division of Parks and Outdoor Recreation. Non restricted areas of our state are being closed without proper oversight by the legislature.

Decisions to deny access for recreational use, because of its importance, have always been made by our legislature, not by bureaucrats. The Constitution of the State of Alaska recognizes the importance of land closures and mandates that all closures over 640 acres must be legislatively designated. We must continue to recognize the importance of land closures and make necessary changes in the current process for restrictions and prohibitions in areas less than 640 acres.

A change in this process with SB 230, in its current form, or other language that achieves our intent, would ensure that all Alaskans would have proper representation by their elected officials and restrictions and prohibitions on traditional recreational activity would need to be justified to the Legislature. Many areas of Alaska may need to be restricted to some or all recreational activity, but these important decisions need to be made at the legislative level, where the people have better access.

### **SB 230 is the People's Access Bill.**

- *Access to Lands*
- *Access to Waters*
- *Access to Government Policy*

## **Options to change current process of land restrictions and closures for traditional recreational use.**

Prepared for the Senate Resources Committee  
by Staff to Senator Drue Pearce  
February 11, 1996

### ***Option 1: SB 230 in its current form.***

SB 230, version C, amends 38.05.300 which deals with land classifications by the Division Lands.

38.05.300 is the same statute that was amended in the 18th Legislature to protect the mining community from arbitrary closures.

The language would mandate legislative approval for any restrictions to traditional use that occur under Title 38.

**Pros:** Sets a precedent and makes any land classifications done under Title 38 authority that restrict or prohibit access come before the legislature for approval.

**Cons:** It does not effect the ILMA transfer process. Division of Lands asserts that when they transfer land through an Interagency Land Management Agreement to the Division of Parks, the land becomes park and is under Title 41 authority. Option 1 will not remedy any of the problems constituents are having within park land.

**The legal question:** Even though Division of Land transfers the authonty, the area is still state land, not park land. Div of Land and Div of Parks disagree, asserting that it is now 'Park Land'. The bills legal drafter has given the informal opinion that even if the land is transferred, it still is state land.

**More Cons:** If this is true, then all ILMA transfers to DOT&PF and Fish & Game also would have to come before the legislature. This is not our intent and this would become very cumbersome.

The Mining Industry also has some concerns with this language and the potential for a conflict between mining and recreational use in an area--Ron Swanson, Director Division of Lands, has stated that this would not occur.

***Option 2: We mandate the Division of Parks and Outdoor Recreation to obtain legislative approval for any restrictions to traditional recreational use in areas that have come under their authority through ILMAs.***

**Pro:** This would ensure that any expansion of Park Land that was restricted or prohibited to recreational use would have to be approved by the legislature. Creating parks that limit access to uses and drawing the boundaries of these parks has always been a legislative duty and this would make sure it remained that way.

**Cons:** Division of Parks asserts that these decisions should not be made in the legislative arena because this would not provide the fairest process. This also does not solve any of the problems constituents are having within park land.

***Option 3: We put language into Title 41 that will implement legislative oversight on the Division of Parks' authority to restrict and prohibit recreational use, through approval or a reporting requirement.***

**Pros:** Division of Lands is the only division in DNR that closes land to traditional recreational use for the 'intrinsic value' of the land, whether on state land through ILMAs or in parks designated by the legislature. By implementing legislative oversight, either through an approval requirement, reporting requirement, or some combination, we would make this process of restrictions and prohibitions more open to the people of Alaska, through their representatives in government.

This is a process we need to fix, when decisions are justified in the means shown in the Div of Parks' Summary of Public Comment.

**Cons:** The legislature designated these areas as parks in statute, therefore closing them to all but designated uses and giving the authority to find solutions to incompatible uses to the Div of Parks. The Division of Parks argues that legislative approval for all their decisions to restrict traditional use would be too cumbersome. They also assert that the legislature is not the proper place for these decisions to be made. People with political stroke and money could influence the legislature on a pet project even if it is in the best interest of the public.

**Note:** Under the Hickel administration, the Division of Parks did not promulgate any regulations to restrict and prohibit access in Parks. Now the Division of Parks contends that they will be implementing so many closures in the next few years that it will become cumbersome for the legislature to approve. Why?

Summary of Public Comment  
Alaska State Park Regulation Proposal, November 1995

The draft regulations cover four categories:

Statewide regulations concerning the park user fee system (11 AAC 5):

- \* the increase in fees for overnight camping, cabins, and annual passes:  
12 in favor - 34 opposed, excluding the 139 form letters
- \* 10 persons expressed opposition to exempting contract managers from having to honor the annual camping passes

The public feels proposed fee limits are too high and may price low income families out of being able to use their state parks. Their assumption is that with this new, higher authority, the state would quickly jump to the maximum level. We are at between \$6 and \$15 now. Some also objected to contract managers not having to honor annual passes. People fear that contract management will lead to less ranger presence and erode the value of their camping passes and discourage tourism to those areas managed by private contractor.

Final Regulations have been changed to reflect:

The maximum fee level for camping will drop from the proposed \$25 to \$20.

Regulations affecting public use of state parks related to camping and boating (11 AAC 12):

One comment received opposing having to permanently affix a camping pass decal to their vehicle.

Regulations pertaining to the use of weapons, vehicles, horses, and alcoholic beverages in certain units of the state park system (11 AAC 20):

- \* the proposed restrictions on powerboats, aircraft and helicopters:  
115 in favor - 42 opposed, excluding the 139 form letters

Numerous ecotourism business and conservation organizations favor the restrictions. The Alaska Wilderness Recreation and Tourism Association which represents over 250 such companies and the Alaska Center for the Environment are two examples. In opposition to the proposal are businesses like ERA Helicopters and Princess Tours (helicopter prohibition only). Groups such as the Alaska Air Carriers Association, RDC, and Alaska Visitors Association also oppose the aircraft restrictions.

The proposed restrictions launched an avalanche of form letters, most likely orchestrated by local snowmachine enthusiasts based on copies returned by out-of-state snowmachine organizations. They fear that the restrictions proposed for aircraft use would be the "first foot to fall" on a program to close areas in Denali State Park and Chugach State Park to the use of snowmachines. This fear is predicated on wide knowledge within the snowmachine community of a letter sent to state parks by the Chair of the Susitna Citizens Advisory Board on 9 February 1995 requesting that regulations be promulgated to implement the 1989 Denali State Park Master Plan. The plan recommends numerous restrictions on motorized uses. However, at this time, Parks is only proposing restrictions on the use of aircraft.

- the proposal to open more bike trails in Chugach State Park:  
10 in favor - 31 opposed

Most opposition focused on opening the South Fork Rim Trail, and to a lesser extent, Near Point and the Middle Fork Loop.

Final Regulations have been changed to reflect:

The aircraft restrictions and helicopter prohibition should remain part of the proposals but modified to open an additional area to aircraft landing, gravel bars in Kachemak Bay State Park; to allow helicopters to land west of the Tokositna River by permit only. Based on oral and written testimony, public sentiment is roughly two to one in favor of the restrictions excluding the form letters. Some industry and user group opposition is expected.

The number of trails opened to bicycles in Chugach State Park will be reduced.

And boating methods and commercial uses of the Kenai River Special Management Area (11 AAC 20).

- \* 6 persons opposed the six persons per boat regulation proposal for Kenai River Special Management Area (KRSMA) - added expense to rafting operations on the upper rivers
- \* 5 persons commented in favor of the KRSMA regulation requiring boat rental businesses to be permitted.

The regulations proposed for the KRSMA will have a significant economic impact on several commercial businesses operating on the upper river. Some accommodation needs to be made to exempt those operators from the six person per boat proposal.

Final Regulations have been changed to reflect:

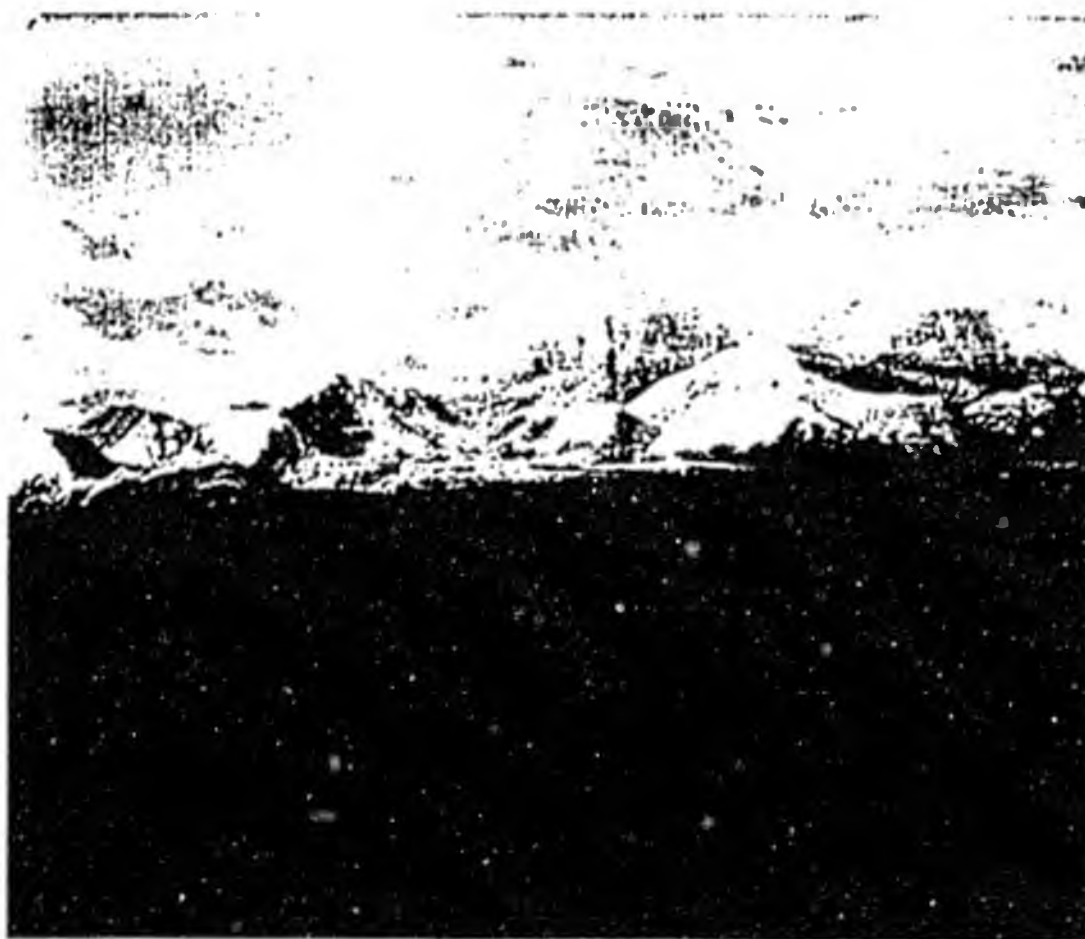
The KRSMA regulation limiting the maximum number of people allowed in a boat will be amended to exclude Kenai and Skilak Lakes.

Other recommended amendments to the draft proposal:

The powerboat restrictions proposed for public safety reasons at Southeast State Marine Parks will affect the landing of powerboats on the beach at Settlers Cove in Ketchikan. This proposal will be revised to only apply from May through September.

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# DENALI STATE PARK MASTER PLAN



1989

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DIVISION OF PARKS AND OUTDOOR RECREATION  
ALASKA DEPARTMENT OF NATURAL RESOURCES



Alaska Department of  
**NATURAL  
RESOURCES**



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**Denali State Park  
Master Plan**

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## Park Boundary Modifications

Proposed boundary modifications are intended to protect small areas of a special nature, such as the Indian River area, and to protect the continuity of existing resources, such as the short stretch of the Tokositna River that is not in the park at this time. The proposed changes are illustrated in Figure 15 (page 73).

The proposed 100-foot buffer along the south shore of the Tokositna River is not intended to preclude the use of private property, but rather is to provide a small, vegetated, visual buffer along the river corridor and protect the river shore line from accelerated erosion related to development that could impact downstream areas inside the state park.

The proposed land exchange with the National Park Service is intended to shift boundaries to readily identifiable and enforceable natural features. This will avoid public confusion over the different regulations (state and federal) applicable to the two parks. It will also simplify the management responsibilities of the respective agencies.

Three separate areas of state-owned land are proposed for addition to the park, either through legislative designation or Interagency Land Management Assignment (ILMA).

Proposal	Management Objectives	Justification
<p>Southern boundary expansion to include Tokositna River. Approx. 330 acres.</p> <p>Legal description:</p> <p>T28N, R6W, S.M.,</p> <p>Sec. 6: state-owned land and water north of the right bank of the Tokositna River.</p> <p>T28N, R7W, S.M.,</p> <p>Sec. 1, 2: state-owned land and water north of the right bank of the Tokositna River.</p>	<p>Establish border along obvious natural feature. Conserve south shore of river with easement. Provide active management.</p>	<p>This small segment of the Tokositna River is the only part of the river not currently in state or national park. Inclusion of the land north of the river in park will preserve natural setting along river and permit active management and enforcement in this area.</p> <p>Designation of a 200' buffer easement effecting state-owned lands along south shore, managed by the Division of Land and Water Management, will create vegetative screen for river users. Land disposals and commercial timber harvest will be prohibited.</p>
<p>Land exchange with National Park Service. Approx. 6,000 acres.</p>	<p>Make management jurisdiction easier for all parties, by defining park boundaries to follow rivers.</p>	<p>The National Park Service and Division have different regulations relative to hunting and other activities in the national and state parks. Will make use of physical boundaries that are easy to identify, thus clarifying jurisdiction and simplifying management.</p>

<u>Proposal</u>	<u>Management Objectives</u>	<u>Justification</u>
<p>East boundary expansion, adjacent to Indian River. Approx. 470 acres.</p> <p>Legal description:</p> <p>T31N, R2W, S.M.</p> <p>Sec. 4,8,9: state-owned land between the Indian River and the Alaska Railroad right-of-way.</p> <p>Sec. 16,17,20: state-owned land north and west of the Susitna River.</p>	<p>Create a more logical boundary. Provide active management and conserve natural resources in this area.</p>	<p>Provide active management to conserve important natural resources in the area, primarily spawning salmon. Inclusion of important buffer adjacent to the park.</p>
<p>South boundary expansion adjacent to Blair Lake. Approx. 360 acres.</p> <p>Legal description:</p> <p>T 24N, R5W, S.M.</p> <p>Sec. 2: waters of Blair Lake.</p> <p>Sec. 3: N1/2, waters of Blair Lake.</p>	<p>Incorporate into the park the small parcel of state land between existing boundary and Blair Lake.</p>	<p>Provide park management for important uplands and Blair Lake. Protect public access between the park and the lake.</p>

## Land Acquisition

Denali State Park has a variety of large and small privately held properties within its boundaries. Acquisition of some inholdings or purchase of development rights should be pursued to help consolidate land ownership patterns and to avoid potential incompatibilities due to differing interests and objectives of the Division and private parties.

<u>Proposal</u>	<u>Management Objectives</u>	<u>Justification</u>
<p>Acquire inholdings at Byers Lake (10 acres).</p>	<p>Protect quiet, undeveloped nature of area. Provide active management.</p>	<p>Consolidate area as campground area. Inholdings are small, but development could have an adverse impact on the park and park experience currently enjoyed.</p>
<p>Acquire inholdings at Low Lake (7 acres).</p>	<p>Protect natural setting and viewshed integrity from High Lake area.</p>	<p>The north end of the park has a highly diverse environment. The viewshed integrity of the High Lake area is very important to the South Denali project.</p>

**SB**

**240**

# ENATE COMMITTEE REF RT First Committee of Referral

DATE: 1/26/96

FURTHER:

Date of 5-Day Notice: 2-1-96  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 2-5-96

The Resources Committee considered SB 240

Relating to the statewide bonding pool for the reclamation activities imposed on mining operations, and extending the pool's use to surface coal mining projects.

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

Senate Bill:  
 same title  
 new title  
 House Bill:  
 same title  
 technical title  
 new: SCR# \_\_\_\_\_

SIGNING-DQ PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>True Justice</i>					
<i>[Signature]</i>	✓				
<i>[Signature]</i>					
<i>[Signature]</i>	✓				
<i>Rich Halford</i>	✓				
CHAIR: <i>Loren A. Fenwick</i>	✓				

**NEW FISCAL NOTE(S):**

Department                      Date    Zero    Fiscal

<i>DNR - Mining Dept</i>	<i>2/5/96</i>		✓

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date    Zero    Fiscal

<i>DNR - Mining Dept</i>	<i>2/5/96</i>		✓

APPROPRIATION -- no fiscal note

\*Include fiscal notes accompanying Governor's bill

**SPONSOR STATEMENT**  
**SENATE RESOURCES COMMITTEE**  
**Senate Bill 240: Mining Bonding Pool**

The Senate Resources Committee introduced SB 240 in response to recommendations by the Alaska Minerals Commission in its January 1996 report to the Legislature and Governor.

The Legislature in 1990 passed legislation to ensure reclamation during and after mining on state, federal, municipal and private lands and waters. In 1982, the Legislature passed a similar law regarding surface coal mining operations in Alaska.

The primary difference is that coal mining operations under AS 27.21.160 have been required to post a performance bond or surety that has been difficult for coal mine permit applicants to obtain.

Allowing surface coal mining owners and operators access to the state's bonding pool (AS 27.19.040(b)) will ensure reclamation bonding will be available for qualified Alaska developments and operations.

The testimony in the packet refers to the incorporation of a surface coal mining advisory commission in a House bill similar to SB 240. The Chairman chose not to include the creation of a new commission in SB 240, because of the cost and the likelihood that the issues raised can be addressed by the Alaska Minerals Commission.

Floor Notes: 2/14/96

**SB 240: Mining/Bonding Pool**  
Senate Resources Committee, Sponsor

Recommendation by the Alaska Minerals Commission  
(Page 5, Jan. 96 report).

Amends the Alaska Surface Coal Mining Control and Reclamation Act

Explicitly allows coal operations to participate in the statewide bonding pool (AS 27.19.040(b)) in lieu of a performance bond under AS 2.21.160.

These statutes cover reclamation activities.

*No deficit*

711 H Street, Suite 600  
Anchorage, Alaska 99501  
Tel. (907) 276-6868  
Fax. (907) 276-2395



ALASKA COAL ASSOCIATION

104 E 11th Avenue, Suite 200  
Fairbanks, Alaska 99701  
Tel. (907) 452-2625  
Fax. (907) 451-6543

July 17, 1996

Representative Gene Theriault  
Alaska State Legislature  
Capitol Building - Room 421  
Juneau, AK 99801-1182

Subject: SB 240 State Bonding Pool Amendments

Dear Representative Theriault:

The following is a summary listing of why we believe that passage of this bill would represent a win-win situation all-around:

No western coal producer has ever defaulted on a reclamation bond. Thus, sureties would consider low risk and as such may reduce the overall risk profile of the state pool. SB 240 would have no effect on the level of bonding required for surface coal mine reclamation. Surface coal mining related statutes and regulations require that the bond value's be directly related to the estimated cost of reclamation, as a result typical surface coal mine reclamation bonds are usually in the \$1,000's/acre

Because of the typically higher reclamation bond values associated with surface coal mining the overall asset value of and income to the state pool would increase substantially with no increase in the risk profile.

Finally as you are aware obtaining bonding for mine developments in Alaska is a difficult, costly and sometimes an impossible proposition. This is as true for surface coal mining as for any other type mining. SB 240, by explicitly including surface coal mining, assures that reclamation bonding would be available for Alaska developments and operations.

The Alaska Coal Association appreciates your efforts and support of this legislation which implements recommendations of the Minerals Commission. We believe the addition of surface coal mining to the state pool will benefit the mining industry as a whole and thereby be a benefit to the state.

Respectfully

A handwritten signature in cursive script, appearing to read 'R. B. Stiles'.

R. B. Stiles  
President

President: R. B. Stiles  
711 H Street, Suite 600  
Anchorage, Alaska 99501  
Tel. (907) 276-6868  
Fax. (907) 276-2395

Secretary: Charles P. Boddy  
122 First Avenue, Suite 302  
Fairbanks, Alaska 99701  
Tel. (907) 452-2625  
Fax. (907) 451-6543



## ALASKA COAL ASSOCIATION

Representative Tom Brice  
Alaska State Legislature  
Capitol Building - Room 3466  
Juneau, AK 99801-1182

Subject: <sup>SB 240</sup> HB 439 State Bonding Pool Amendments

Dear Representative Brice:

The Alaska Coal Association is in full support of HB 439/<sup>SB 240</sup>

As I am sure you are aware surface coal mining was never excluded from the state bonding pool and it was always intended that, after the state bonding pool had been in place for sometime, surface coal mining would be specifically included. Your bill clearly implements this intent.

The following is a summary listing of why we believe that passage of this bill would represent a win-win situation all-around:

- No western coal producer has ever defaulted on a reclamation bond. Thus, sureties would be consider low risk and as such may reduce the overall risk profile of the state pool.
- HB 439 would have no effect on the level of bonding required for surface coal mine reclamation. Surface coal mining related statutes and regulations require that the bond value's be directly related to the estimated cost of reclamation, as a result typical surface coal mine reclamation bonds are usually in the \$1,000's/acre
- Because of the typically higher reclamation bond values associated with surface coal mining the overall asset value of and income to the state pool would increase substantially with no increase in the risk profile.
- Finally as you are aware obtaining bonding for mine developments in Alaska is a difficult, costly and sometimes impossible proposition. This is as true for surface coal mining as for any other type mining. HB 439, by explicitly including surface coal mining, assures that reclamation bonding would be available for Alaska developments and operations.

The Alaska Coal Association appreciates you and your staffs efforts to introduce this legislation which implements recommendations of the Minerals Commission. We believe the addition of surface coal mining to the state pool will benefit the mining industry as a whole and thereby be a benefit to the state.

Respectfully

R.B. Stiles  
President

cc: The Honorable Loren Leman, Alaska State Senate  
Steve Borell, AMA  
Charlie Boddy, Usibelli Coal Mine, Inc.  
Becky Gay, RDC



**Charlie Boddy**

**Vice President Of Governmental Relations**

**January 31, 1996**

**Representative Tom Brice  
Alaska State Legislature  
Capitol Building - Room 3466  
Juneau, Alaska 99801-1182**

**Subject: HB 439 State Bonding Pool Amendments**

**Dear Representative Brice:**

**Usibelli Coal Mine Incorporated (UCM) wishes to thank you and your staff for the attentive effort which resulted in the introduction of HB 439. Allowing surface coal mining owners and operators guaranteed access to the State's bonding pool, secures a new source of bonding for the reclamation programs required by certain regulatory agencies.**

**The Alaska Surface Coal Mining Control and Reclamation Act (ASCMCRA) of 1982 allows successful permit applicants various types of reclamation bonding as an option to insure successful reclamation of mined properties. Collateral, surety and self bonding mechanisms are provided for under the ASCMCRA statute (AS 27.21). Unfortunately, more than a decade after the passage of ASCMCRA, the self bonding regulations are not yet approved or available for use by coal mine permit applicants. Additionally, surety bonding companies have been disinclined to make bonding available in a state where only one coal mine is in production. The limitations forced upon our fledgling industry are quickly apparent, and other avenues for bonding are needed and appreciated.**

**HB 439 also addresses an earlier recommendation of the Mineral Commission to create a surface coal mining advisory commission. The commission will act as a liaison between the state legislature, administration, the federal Office of Surface Mining Reclamation and Enforcement (OSMRE), and the regulated community. The regulated community in this instance are those individuals or mining companies with a vested interest in state leases, private lands, or native lands.**

**USIBELLI COAL MINE, INC. ♦ 122 First Avenue - Suite 302 ♦ Fairbanks, Alaska 99701  
Telephone 907-452-2625 ♦ Facsimile 907-451-6543**

Although the current legislation directs the governor to make all nine of the appointments, the legislature may want to consider making a select number of appointments themselves. The legislature may also want to consider making the chairperson of the Senate and House Resource Committees ex-officio members of the proposed commission.

After comparing opinions with Bob Stiles, president of the Alaska Coal Association, we believe a two year life for the newly formed commission would be adequate. At the national level, Wyoming Representative Barbara Cubin has introduced special legislation (H.R. 2372) that will allow states such as Alaska, who have primacy to regulate surface coal mining, the ability to manage their state tailored program with diminished interference from the OSMRE.

One of the tasks the commission could work on clarifying would be the relationship of the state and federal agencies in applying the regulations developed for use in the coterminous United States, to the unique environment we experience here in Alaska. A documented study performed by the National Research Council pursuant to section 708 of PL 95-87 (the federal Surface Coal Mining Control and Reclamation Act of 1977) could also be reviewed and utilized to identify necessary changes to render the ASCMCRA more effective and workable on a regional basis. This 328 page investigation was authored by members selected from the National Academy of Sciences and the National Academy of Engineering. The undertaking was chaired by a distinguished Alaskan, Dr. Earl H. Beistline.

Arctic mining will always present numerous challenges and opportunities for those with the intestinal fortitude to participate in this segment of the Alaska economy. Your responsible efforts to assist our industry have always been appreciated. Thank you for preparing such forward thinking legislation. With best regards, I remain  
Sincerely,



Charlie Boddy

cc: The Honorable Loren Leman, Alaska State Senate  
Steve Borell, AMA  
Bob Stiles, ACA  
Becky Gay, RDC



# Alaska State Legislature

Senate Resources Committee

State Capitol  
Juneau AK 99801

Official Business

## MEMORANDUM

TO: Representative Joe Green, Co-Chairman  
Representative Bill Williams, Co-Chairman  
House Resources Committee

FROM: Senator Loren Leman, Chairman  
Senate Resources Committee

A handwritten signature in cursive script that reads "Loren Leman".

DATE: March 19, 1996

RE: SB 240: MINING BONDING POOL

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Please schedule at your earliest convenience a hearing on Senate Bill 240: Mining/Bonding Pool. This legislation was introduced by the Senate Resources Committee at the request of the Alaska Minerals Commission. It is one of the Commission's recommendations to made in its January 1996 report to the Legislature.

SB 240 amends the Alaska Surface Coal Mining Control and Reclamation Act to explicitly allow coal operations to participate in the statewide bonding pool (AS 27.19.040(b)) in lieu of a performance bond under AS 2.21.160.

The bill was reported out of Resources with six do pass recommendations and passed the Senate February 14 with 19 yeas.

If you have questions regarding this legislation, please contact Senate Resources Committee Staff, Annette Kreitzer at 465-4907.

9-LS1585A

Chenoweth

1/23/96

## SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECCND SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced:

Referred:

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to the statewide bonding pool for the reclamation activities  
2 imposed on mining operations, and extending the pool's use to surface coal mining  
3 projects."

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

5 \* Section 1. AS 27.19.040(b) is amended to read:

6 (b) The commissioner shall establish a statewide bonding pool for mining  
7 operations as an alternative to individual performance bonds. A miner participating  
8 in the bonding pool shall contribute an initial deposit not to exceed 15 percent of the  
9 reclamation bond plus an additional nonrefundable annual fee not to exceed five  
10 percent of the reclamation bond. The commissioner shall refund the 15 percent deposit  
11 upon satisfactory completion of the approved reclamation plan. If requested by the  
12 miner, the commissioner may apply the deposit to a new reclamation plan. In  
13 addition to its use for mining operations under this chapter, the [THE]  
14 commissioner shall [MAY] allow the bonding pool to be used to meet the

1 requirements of AS 27.21.160.

2 \* Sec. 2. AS 27.21.080(a) is amended to read:

3 (a) A permit issued under this chapter includes the right of successive renewal  
4 upon expiration, for areas within the boundaries of the permit area. An opponent of  
5 renewal of a permit has the burden of proving that the permit should not be renewed.  
6 Subject to (c) of this section, if a permittee applies for renewal of the permit, the  
7 commissioner shall renew the permit after public notice is given in the manner  
8 provided in AS 27.21.130 unless the commissioner finds, in writing, that

9 (1) the terms and conditions of the permit have not been satisfactorily  
10 met, and the permittee has not demonstrated to the satisfaction of the commissioner  
11 that the permittee is meeting and will continue to meet a schedule set by the  
12 commissioner under AS 27.21.240(a) or (b) for correcting a permit violation;

13 (2) the surface coal mining and reclamation operation of the permittee  
14 is not in compliance with the environmental protection standards of this chapter and  
15 regulations adopted under it;

16 (3) the requested renewal substantially jeopardizes the permittee's  
17 continuing responsibility on existing permit areas;

18 (4) the permittee has not either

19 (A) provided sufficient evidence that the performance bond  
20 under AS 27.21.160 in effect for the operation will continue for the renewal  
21 period requested in the application, and that any additional bond required by  
22 the commissioner under AS 27.21.160 will be obtained; or

23 (B) when seeking to use the statewide bonding pool for  
24 mining operations established under AS 27.19.040(b), complied with all  
25 requirements of the bonding pool; or

26 (5) information required by the commissioner in accordance with this  
27 chapter has not been provided by the permittee.

28 \* Sec. 3. AS 27.21.140(d) is amended to read:

29 (d) If the application is approved, the permit shall be issued upon filing of the  
30 performance bond required by AS 27.21.160 or satisfactory compliance with the  
31 requirements of the statewide bonding pool for mining operations established

1 under AS 27.19.040(b).

2 \* Sec. 4. AS 27.21.160(a) is amended to read:

3 (a) Except as provided in (c) and (e) of this section, after an application for  
4 a permit has been approved and before the permit may be issued, the applicant must  
5 file with the commissioner, on a form prescribed and furnished by the commissioner,  
6 a performance bond payable to the State of Alaska and conditioned on faithful  
7 performance of the requirements of this chapter and the permit. The bond must cover  
8 the area of land within the permit area on which the applicant will initiate and conduct  
9 surface coal mining and reclamation operations within the initial term of the permit.  
10 As succeeding increments of surface coal mining and reclamation operations are  
11 initiated and conducted within the permit area, the permittee shall provide an additional  
12 bond or bonds to cover those increments in accordance with this section. The amount  
13 of the bond required for an area within the permit area shall be determined by the  
14 commissioner and shall reflect the probable difficulty of the reclamation considering  
15 the topography, geology, hydrology, revegetation potential, and similar factors relating  
16 to the area. The amount of the bond must be sufficient to assure the completion of the  
17 reclamation plan by the commissioner in the event of forfeiture and, for the entire  
18 permit area, may not be less than \$10,000.

19 \* Sec. 5. AS 27.21.160 is amended by adding a new subsection to read:

20 (g) As an alternative to performance bonds, applicants conducting surface coal  
21 mining and reclamation operations may use the bonding pool established by the  
22 commissioner under AS 27.19.040(b) for reclamation activities to meet the  
23 requirements imposed by this section.

24 \* Sec. 6. AS 27.21.998(11) is amended to read:

25 (11) "permit area" means the area of land indicated on the approved  
26 maps submitted by the operator with the application which must be covered by the  
27 operator's bond as required by AS 27.21.160(a) - (f) or by the individual  
28 performance and payment requirements for the operator who participates in the  
29 statewide bonding pool for mining operations as authorized by AS 27.21.160(g),  
30 [AS 27.21.160] and must be readily identifiable by appropriate markers on the site:

# WORK ORDER REQUEST FORM

# W.O. [19] LS-1585

KEYWORDS: MINES/MINERALS ASSIGNED: Chenoweth

REQUEST FOR: New Bill TAKEN BY: Chenoweth

SUBJECT: Mining Bonding Pool

REQUESTED FOR: SC SRES BY: Annette PHONE: 465-2095

DELIVER TO: Sen. Leman, Cap. 113

INSTRUCTIONS: Draft bill relating to a statewide bonding pool for the reclamation activities imposed on mining operations.

<p>OBTAIN</p>	<p>SPECIAL DRAFTING INSTRUCTIONS ATTACHED [ ] AUTHORIZED TO CONFER WITH _____ _____ RETURN _____ _____ TO REQUESTOR APPROVED: <input checked="" type="checkbox"/> DIRECTOR, LEGAL SERVICES</p>
---------------	--

<p>REVIEWED _____ IN <u>01/23/96</u> DUE _____ TYPED: Draft _____ Date _____ Final _____ Date _____ PROOFED _____ DELIVERED _____</p>	<p>SPECIAL INSTRUCTIONS to TYPING/PROOFING _____ _____ Request for DRAFT</p>
---	--

# FISCAL NOTE

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO. SB240**

Revision Date: Original Dept Affected: Natural Resources  
 Title: An Act relating to the statewide bonding pool BRU: Resource Development  
for the reclamation activities imposed on mining operations... Component: Mining Development  
 Sponsor: Senate Resources  
 Requestor: Senate Resources Component Serial No. 442

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ none

**POSITIONS**

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

**ANALYSIS:** (Attach a separate page if necessary)

There is no fiscal impact anticipated with implementation of this legislation.

Prepared by: Jules Treston, Director Phone: 269-6625  
 Division: Mining and Water Date: 5-Feb-96  
 Approved by Commissioner: [Signature] Date: 5-Feb-96  
 Agency: Natural Resources

**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

REPORT OF THE

# Alaska Minerals Commission



JANUARY 1996

# ALASKA MINERALS COMMISSION

JANUARY 1996

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## FOREWORD

The Alaska Minerals Commission wishes to thank the Governor and the Legislature for implementing several of our recommendations during 1995. Highlights include the passage of the Mining Incentives and the Diminutive Discharge Bills, and continued funding of the Airborne Geophysical Surveys and of the Citizen's Advisory Commission on Federal Areas. Legislative and administrative support of the mineral industry has helped attract increased investment in Alaska that is creating new private sector jobs throughout the State.

The Alaska Minerals Commission was created by the 14th Legislature and signed into law on June 6, 1986. The enabling legislation instructs the Commission to make recommendations to the Governor and Legislature on ways to mitigate constraints, including governmental constraints, on the development of minerals, including coal, in the state.

The Commission has presented reports to the Governor and Legislature annually since January, 1987, and is authorized to do so until January, 1999. Commission members are appointed by the Governor, the President of the Senate, and the Speaker of the House. The current members include representatives of the placer, hard rock, and coal mining industries and come from diverse areas of the state.

During 1995, the Commission held meetings in Juneau, Fairbanks, and Anchorage, including meetings with the Lieutenant Governor and Commissioners of various departments. The recommendations in this report are the result of input at these meetings. All Commission meetings are open to the public, and members encourage comments from all interested parties at any time.

Following the list of recommendations in the executive summary, this report contains background information, or findings, on each issue, followed by the related recommendation. These have been grouped into a Part A which deals with issues that are mainly State issues, and a Part B which are federal issues which affect the State and can be influenced by State participation.

On behalf of the members of the Commission, I would like to express our appreciation to those members of the public, to the Alaska Miners Association, the Resource Development Council, and to the many government agencies and private organizations that contributed to the preparation of the report. The Commission wishes to thank Commissioner William L. Hensley of the Department of Commerce and Economic Development and Karl Ohls, Dick Swainbank, and Al Clough of the Division of Trade and Development who have provided excellent administrative and professional support to the Commission.

Earl H. Beistline  
Chair

# ALASKA MINERALS COMMISSION

## 1996 REPORT TO THE GOVERNOR AND ALASKA STATE LEGISLATURE

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# EXECUTIVE SUMMARY

## Industry Overview

Mineral exploration expenditures in 1995 were in excess of \$43 million, a 38 percent increase over the \$31.1 million reported in 1994. Development expenditures of over \$131 million in 1995 were an increase of 191 percent over the \$44.9 million reported the previous year.

The 1994 airborne geophysical survey of the Fairbanks and Richardson districts, combined with the activity at the Fort Knox Mine and the True North property created a minor gold rush in the Fairbanks area during the winter and spring of 1995. Airborne geophysical surveys were completed in the Manley - Ramparts area in late September, and the results should be available early in 1996.

Several mining-related projects came to fruition in 1995. Construction started at the Fort Knox Mine and power intertie near Fairbanks and at the Healy Clean Coal Project. The Skagway ore terminal was reopened, and it was announced that the Greens Creek Mine will reopen in 1997. Although the Valdez Creek Mine near Cantwell ceased production in July, the Nixon Fork Mine near McGrath, which opened in October, is expected to produce at least as much gold annually.

A new ore body, as large as the original, was found at the Red Dog Mine near Kotzebue. Permitting progressed for the Illinois Creek gold mine near Nulato. In Southeast Alaska the Kensington Mine is now under the sole ownership of Coeur Alaska, and a new permitting initiative may allow construction as early as 1996. At the A-J Mine the Environmental Impact Statement is being reworked to consider submarine tailing disposal.

Exploration activity was reported at Red Dog in the Ambler district, and at Wiseman and Chandalar in the Brooks Range. Other areas with significant activity include Nome, Iditarod, Donlin Creek, Ramparts, Livengood, Fairbanks, Circle, Tok, Paxson, Cantwell, Haines, Juneau, and Prince of Wales Island.

## RECOMMENDATIONS

### PART A: ISSUES REQUIRING STATE ACTION

#### **USER FEES AND ASSESSMENTS**

- 1a The Alaska Legislature should amend AS 44.46.025, which allows the Department of Environmental Conservation to prescribe fees for services, to require public review and legislative approval of all fees and/or fee schedules prior to the fees becoming effective.
- 1b The Alaska Legislature should amend AS 44.46.025 to require that all regulations that prescribe fees shall include a detailed schedule justifying the applicable direct costs of inspections, permit preparation, and administration, plan review and approval, and other services provided by the department that are to be paid for by the proposed fee. In no event should the proposed fee exceed those costs reasonably necessary to cover the direct costs cited above.
- 1c The Alaska Legislature should amend the fee prescribing authority of other agencies in a similar manner.

#### **GEOPHYSICAL AND GEOLOGIC MAPPING**

- 2 The Governor and Legislature should invest \$5 million per year for the next decade, preferably through foundation funding, in airborne geophysical surveys and complementary geological and geochemical surveys.

#### **NPDES PRIMACY**

- 3 The Governor should direct the Alaska Department of Environmental Conservation (ADEC) to develop a plan for assuming primacy of the National Pollution Discharge Elimination System (NPDES) program, and the Legislature should provide the necessary funding to ADEC to support this effort.

## **LEAD AGENCY**

- 4 The Governor should issue an Executive Order directing all agencies to comply with AS 27.05.010(b), which designates the Alaska Department of Natural Resources as the lead agency for all matters relating to exploration, development, and management of mines.

## **ACCESS**

- 5 The Legislature should make funding available to the Attorney General's Office, and the Governor should aggressively assert "quiet title" to the eleven trails certified under 11.AAC.51 as RS2477 Rights-of-Way. Further, the State should assert an access route pursuant to Title XI of the Alaska National Interest Lands Conservation Act to test the process and set a precedent.

## **NAVIGABILITY**

- 6 The Legislature should make funding available to reestablish a centralized, systematic navigability program within the Department of Natural Resources. Additionally, funding should be made available to the Department of Law to support any quiet title actions necessary to secure ownership of submerged lands.

## **STATE REGULATORY REFORM**

- 7 The Legislature should amend the Administrative Procedures Act (AS 44.62.195) by adding a section as follows: "If the adoption, amendment, or repeal of a regulation would require increased costs for compliance by individuals and businesses, the department or agency proposing the regulation shall prepare an estimate of those costs for the year following adoption, amendment, or repeal of the regulation and for any additional period of time required for implementation and compliance with the regulation."
- 8 The Governor should direct the Commissioner of the Department of Natural Resources to continue to take the necessary steps to allow Miscellaneous Land Use Permits to be issued for periods of up to five years.

## **CITIZENS ADVISORY COMMISSION ON FEDERAL AREAS**

- 9 The Governor and Legislature should provide expanded budgetary and programmatic support to the Citizens Advisory Commission on Federal Areas.

## **COASTAL ZONE MANAGEMENT**

- 10 The Legislature should act on the resolution of the Coastal Policy Council which defines the "Uses of State Concern," and ensure that economic development opportunities, such as mining, be included in the guidelines and standards.

## **COAL ISSUES**

- 11 The Legislature should prepare necessary changes to AS 27.19.010(c) and AS 27.19.010(b) to allow for the inclusion of all mining companies and individuals in the State of Alaska's reclamation bonding pool.

## **EDUCATION AND RESEARCH**

- 12 The Governor and the Legislature should appropriate \$40,000 to the Division of Educational Program Support, Minerals and Energy Education Program, as the State's share of supporting the Alaska Mineral and Energy Resource Education Fund (AMEREF).

- 13a The Governor and Legislature should recognize, through a Legislative Resolution, the vital services that the mining, geological and petroleum engineering programs of the University of Alaska system provide to the State of Alaska
- 13b The Governor and Legislature should provide adequate budgetary support to the mining, geological and petroleum engineering programs throughout the University of Alaska system.

### **STATE LABOR ISSUES**

- 14a Legislation should be enacted to allow work schedules to be set on the basis of project-specific considerations which will permit more efficient use of labor and provide more desirable time-off patterns for employees. Alaska Statute 23.10.060 currently provides opportunities for flexible work plans at small seasonal mining operations and for surface mines. These same opportunities should be extended to all mining operations without regard to size, type, and/or seasonal nature of the work.
- 14b Legislation should be enacted to amend current statutes limiting underground shifts from the current maximum of eight hours to a maximum of twelve hours, similar to SB 295 in the 17th Legislature.

---

## **PART B: FEDERAL ISSUES OF STATE CONCERN**

### **TAILINGS DISPOSAL OPTIONS**

- 15a The Governor and the Legislature should work with the Congressional Delegation to fully support and encourage the Environmental Protection Agency to adopt the necessary rule changes which will allow Submarine Tailings Disposal to be investigated as part of the Supplemental Environmental Impact Statement for the A.J. project.
- 15b The Governor should continue to support the Technical Review Team established by the State to review the investigation of Submarine Tailings Disposal as a potentially viable disposal option.

### **MINING LAW OF 1872**

- 16 The Governor, in conjunction with the Congressional delegation and the Western Governors Association, should give continuing support to the changes in the Federal Mining Law embodied in SB 506 and HR 1508 that would allow continued, responsible mineral development on federal lands in Alaska.

### **ANILCA PROVISIONS**

- 17 The Governor and Legislature, by Executive Order and Legislative Resolve, working through the Attorney General's office, the State's Washington office, and the Congressional Delegation should insist that the federal administration:
- a provide access across Conservation System Units (CSU) as required by Title XI of the Alaska National Interest Lands Conservation Act (ANILCA);
  - b prohibit the creation of additional CSU lands in Alaska as required by Sections 101d and 1326b of ANILCA; and
  - c exchange mineralized areas from existing CSU under the authority of Sections 103b and 1302h of ANILCA.

### **INTERNATIONAL PARKS IN ALASKA**

- 18 A Legislative Resolve and an Executive Order by the Governor should be enacted to vigorously and resolutely oppose the creation of any International Park, World Heritage Site or International Marine Biosphere Reserve in Alaska or in the waters adjacent to Alaska.

## FINDINGS AND RECOMMENDATIONS PART A: ISSUES REQUIRING STATE ACTION

### USER FEES AND ASSESSMENTS

**FINDING 1.** In September 1995, the Alaska Department of Environmental Conservation (ADEC) proposed regulations requiring a \$0.50 per ton fee for the disposal of solid waste, including municipal landfills and the disposal of pulverized rock into mine tailings ponds that are permitted as solid waste facilities. For a large hardrock mine generating 10 - 15 million tons per year, the disposal fee would be from \$5-7.5 million per year. Such a permit fee bears no relationship whatsoever to the cost of permitting and monitoring the facility, creates a unique and punitive disincentive for hard rock mining, and jeopardizes the viability of an industry that has the potential for creating thousands of private-sector jobs throughout the State.

This ill-conceived proposal is symptomatic of a broader problem endemic in the current policy allowing state agencies to assess user fees on captive customers without legislative review. As State revenues decline, agencies with the authority to assess fees will predictably attempt to both increase and broaden the scope of those fees in an act of budgetary self-preservation, with no meaningful incentive to consider the effects on the customer or the community.

Alaska cannot afford such an irresponsible process, especially when regulatory stability is a key element in marketing Alaska as an attractive and competitive place to do business. The citizens and businesses of Alaska deserve an open budgetary process that includes legislative oversight and that clearly details the relationship between user fees and agency expenditures. Anything less amounts to taxation without representation.

### COMMISSION RECOMMENDATIONS

- 1a *The Alaska Legislature should amend AS 44.46.025, which allows the Department of Environmental Conservation to prescribe fees for services, to require public review, and legislative approval of all fees and/or fee schedules prior to the fees becoming effective.*
- 1b *The Alaska Legislature should amend AS 44.46.025 to require that all regulations that prescribe fees shall include a detailed schedule justifying the applicable direct costs of inspections, permit preparation, and administration, plan review and approval, and other services provided by the department that are to be paid for by the proposed fee. In no event should the proposed fee exceed those costs reasonably necessary to cover the direct costs cited above.*
- 1c *The Alaska Legislature should amend the fee prescribing authority of other agencies in a similar manner.*

### GEOPHYSICAL AND GEOLOGICAL MAPPING

**FINDING 2.** In almost every country in the world, airborne geophysical surveys are funded by the national governments as a cost-effective complement to traditional geologic mapping in order to attract mineral exploration investment.

Alaska has only recently invested in these surveys, but increased mineral exploration in the Nome, Circle, and Fairbanks districts can be attributed, in part, to the 1992 and 1994 airborne geophysical surveys. Sales of the geophysical data, priced between \$4 for maps to \$150 for CD-ROMs, are approaching \$20,000, further attesting to the popularity of the program.

At least half of Alaska's 100,000 square miles (104 million acres) of State-owned land has high mineral value and should be surveyed, but at the present level of funding it will take over 100 years to complete the airborne geophysical surveys.

These mapping programs should be viewed as an investment similar to the marketing programs of the Alaska Seafood Marketing Institute or the Alaska Tourism Marketing Council, and should be accelerated to cover known and suspected mineral belts in a reasonable time frame.

### COMMISSION RECOMMENDATIONS

- 2 The Governor and Legislature should invest \$5 million per year for the next decade, preferably through foundation funding, in airborne geophysical surveys and complementary geological and geochemical surveys.*

### NPDES PRIMACY

**FINDING 3.** Industry and government, alike, desire to make the permitting process for mining operations in Alaska more efficient, accessible, predictable, and accountable. Other states provide a permitting and regulatory structure that is much closer to these goals than the present structure in Alaska. One key element in these other states, including Nevada, is that they have primacy over the National Pollutant Discharge Elimination System (NPDES) process.

Assuming primacy of the NPDES process in Alaska would achieve several objectives. First, it would make the process more efficient by bringing several existing permits under the common control of the State. This should result in a time savings by allowing the major permits to be developed concurrently. Second, primacy would make the process more accessible for all involved, including the industry, the State, and the general public.

The financial burden of assuming primacy could be eased by providing for a phased assumption of the NPDES program. While there is an expense to assuming primacy, there is presently a high cost of permitting in Alaska, and an opportunity cost to the citizens of Alaska from the delaying of projects. So the question is not whether Alaska can afford to assume primacy, but whether Alaska can afford not to assume control of federally-mandated regulatory programs.

### COMMISSION RECOMMENDATIONS

- 3 The Governor should direct the Alaska Department of Environmental Conservation (ADEC) to develop a plan for assuming primacy of the National Pollution Discharge Elimination System (NPDES) program, and the Legislature should provide the necessary funding to ADEC to support this effort.*

### LEAD AGENCY

**FINDING 4.** Alaska Statute 27.05.010(b) provides that the Alaska Department of Natural Resources (ADNR) "shall coordinate all regulatory matters concerning mineral exploration, development mining and associated activities. Before a state agency takes action that may directly or indirectly affect the exploration, development or management of mineral resources, the agency shall consult with and draw upon the mining expertise of the department."

This statute was recently violated when the Alaska Department of Environmental Conservation (ADEC) proposed a \$0.50 per ton user fee for solid waste, applicable both to municipal solid waste at landfills and to pulverized rock from mining operations.

Even if the \$0.50 per ton fee is not ultimately applied to mine tailings, the chaos and ill-will created by such a poorly-researched proposal reinforces the merits of using ADNR expertise to coordinate regulatory matters concerning mining.

**COMMISSION RECOMMENDATIONS**

- 4 The Governor should issue an Executive Order directing all agencies to comply with AS 27.05.010(b), which designates the Alaska Department of Natural Resources as the lead agency for all matters relating to exploration, development and management of mines.*

**ACCESS**

**FINDING 5.** RS 2477 access corridors may provide the only assured access across, and within, the vast system of Conservation Systems Units in Alaska other than the untested Title XI access provided for in the 1980 Alaska National Interest Lands Conservation Act (ANILCA).

Since 1993, the Alaska Division of Land has researched about 1,900 trails proposed as RS2477 Rights-of-Way. Of these, 119 have existing Rights-Of-Way, 186 were duplicative, 255 need more information, 415 are on hold, and 558 appeared to be well qualified. Only 15 were rejected.

Eleven of the 558 qualified trails were selected as test cases, and were "certified" by the State under 11 AAC 51. The federal government was served with a "Notice of Intent to File" quiet title to these 11 RS2477 Rights-Of-Way more than six months ago.

The next legal step will be to file a "quiet title" action in court to determine the validity of the routes, but funds are apparently unavailable in the Attorney General's Office for this precedent-setting action.

**COMMISSION RECOMMENDATIONS**

- 5 The Legislature should make funding available to the Attorney General's Office, and the Governor should aggressively assert "quiet title" to the eleven trails certified under 11 AAC 51 as RS2477 Rights-of-Way. Further, the State should assert an access route pursuant to Title XI of the Alaska National Interest Lands Conservation Act to test the process and set a precedent.*

**NAVIGABILITY**

**FINDING 6.** State ownership of the beds of navigable waters is an inherent attribute of State sovereignty protected by the United States Constitution. At Statehood in 1959, title to the beds of navigable waters in Alaska was vested in the newly-formed State.

In 1980, the State established a comprehensive navigability program within the Department of Natural Resources (DNR). This program was designed to respond to federal land conveyances and land management activities under the Alaska Statehood Act, the Alaska Native Claims Settlement Act, and the Alaska National Interest Lands Conservation Act. The basic purpose of the program was to protect the public rights associated with navigable waters, including the State's title to the submerged lands. The program also included monitoring of federal land conveyance and management programs to identify navigability disputes, seeking cooperative resolution of navigability problems through negotiation and legislation, and preparing for navigability litigation.

On June 30, 1995, the Navigability Section of the DNR was shut down and all work on a centralized, systematic stream or water body program was suspended. In cases where a State approval or permit is dependent upon State ownership, the agency having jurisdiction over a pending action is responsible for making and supporting ownership issues. The decentralization of the responsibility for asserting inland and offshore submerged land ownership greatly increases the potential for damage to the State's long-term capability to achieve successful quiet title action in federal court.

**COMMISSION RECOMMENDATIONS**

- 6 *The Legislature should make funding available to reestablish a centralized, systematic navigability program within the Department of Natural Resources. Additionally, funding should be made available to the Department of Law to support any quiet title actions necessary to secure ownership of submerged lands.*

**STATE REGULATORY REFORM**

**FINDING 7.** Alaska mineral producers often face higher costs of doing business due to harsher climate, to higher labor costs, and to higher capital costs. Additional indirect costs due to regulations can have the effect of making Alaska mines noncompetitive with those in other states and countries. The Administrative Procedures Act (AS 44.62.195) requires State agencies to prepare fiscal notes which estimate the costs to State government of a proposed regulation. State agencies should also be required to estimate the compliance costs of proposed regulations to individuals and businesses as a formal part of the process of adopting regulations.

**COMMISSION RECOMMENDATIONS**

- 7 *The Legislature should amend the Administrative Procedures Act (AS 44.62.195) by adding a section as follows: "If the adoption, amendment, or repeal of a regulation would require increased costs for compliance by individuals and businesses, the department or agency proposing the regulation shall prepare an estimate of those costs for the year following adoption, amendment, or repeal of the regulation and for any additional period of time required for implementation and compliance with the regulation."*

**FINDING 8.** Authority for the issuance of Alaska Placer Mining Permits comes through the Miscellaneous Land Use Permit process. As the regulations are currently written, a permit under this section can be issued for only one year. Allowing longer permit periods would create a more stable environment for planning and financing mining projects while significantly reducing the work load of the Division of Mining.

**COMMISSION RECOMMENDATIONS**

- 8 *The Governor should direct the Commissioner of the Department of Natural Resources to continue to take the necessary steps to allow Miscellaneous Land Use Permits to be issued for periods of up to five years.*

**CITIZEN'S ADVISORY COMMISSION ON FEDERAL AREAS**

**FINDING 9.** The Citizens Advisory Commission of Federal Areas was established by the Alaska Legislature in 1981 shortly after the enactment of the Alaska National Interest Lands Conservation Act. The Commission is composed of 16 members, half of whom are appointed by the Governor and half by the Legislature, including four sitting legislators. The Commission analyzes federal legislation, regulations, and management decisions, determines the impact of these actions on Alaska's citizens, and makes recommendations to both State and Federal agencies for corrective actions to problems discovered. As federal regulations are finally developed, the case load is expanding.

Development of federal lands and regulations for access across them is important to the State's economy. The Commission provides a valuable and cost-effective mechanism through which State concerns regarding management of all federal lands can be expressed.

**COMMISSION RECOMMENDATIONS**

- 9 *The Governor and Legislature should provide expanded budgetary and programmatic support to the Citizens Advisory Commission on Federal Areas.*

**COASTAL ZONE MANAGEMENT**

**FINDING 10.** Alaska Statute 46.40.040 lists the duties of the Coastal Policy Council (CPC). One duty is to identify and manage "Uses of State Concern." Alaska Statute 46.40.060 states that the CPC is to review and approve Coastal Management Programs, and to ensure that the programs do not arbitrarily or unreasonably restrict or exclude "Uses of State Concern." Alaska Statute 46.40.100 states that the Legislature shall approve guidelines and standards adopted by the CPC. The CPC has defined the "Uses of State Concern" by resolution.

**COMMISSION RECOMMENDATIONS**

- 10 *The Legislature should act on the resolution of the Coastal Policy Council which defines the "Uses of State Concern," and ensure that economic development opportunities, such as mining, be included in the guidelines and standards.*

**COAL ISSUES**

**FINDING 11.** In 1990, the Alaska State Legislature passed into law a new statute to ensure reclamation occurred during and after mining on state, federal, municipal, and private land and water. In 1982, the Legislature passed a similar law regarding surface coal mining operations in Alaska. These two programs offer various reclamation bonding mechanisms to companies and individuals engaged in mining activities. However, primary difference exists, in that, coal mining operations are currently not able to participate in the State's bonding pool. A change in statute is advocated to allow for participation, if desired, of all mining companies and individuals in the State's bonding pool.

**COMMISSION RECOMMENDATIONS**

- 11 *The Legislature should prepare necessary changes to ~~AS 27.19.010(c)~~ and AS 27.19.040(b) to allow for the inclusion of all mining companies and individuals in the State of Alaska's reclamation bonding pool.*

**EDUCATION AND RESEARCH**

**FINDING 12.** The "Alaska Resource Kit: Minerals" which is being used in the statewide public school system, is an excellent program for educating Alaska's students in the issues and fundamentals of resource development. In the past, the program has been a cooperative effort between the Department of Education, which developed the curriculum and is responsible for its implementation, and the Alaska Mineral and Energy Resource Education Fund (AMEREF). AMEREF is an industry-supported organization which annually funds the production and replacement of the teaching materials and which partially funds the salary of a Mineral Specialist in the Department of Education who is responsible for providing teacher training and for implementing the program into the school system. This program has proven to be a success and reflects the cooperation that has existed during the ten years of the program's existence.

The State has recently reneged on its half of the funding for the salary of the Minerals Specialist. This program must not falter, as a broad-based resource education of Alaska's residents is needed to ensure an understanding of the resource needs of a modern society.

**COMMISSION RECOMMENDATIONS**

- 12** *The Governor and the Legislature should appropriate \$40,000 to the Division of Educational Program Support, Minerals and Energy Education Program, as the State's share of supporting the Alaska Mineral and Energy Resource Education Fund (AMERET).*

**FINDING 13.** The University of Alaska statewide system offers accredited degree programs for educating mining and geological engineers, (UAF School of Mineral Engineering); for educating geologists and geophysicists, (UAF Geology and Geophysics Departments); for providing mining public extension services, (UAF Mining Extension); for providing vocational and safety training, (UAS Institute of Mining Technology and UAA Mining and Petroleum Training Service); and for conducting applied research in direct support of the mineral industry, (UAF Mineral Industry Research Laboratory). These professional degree, public service, and applied research programs are vital to the continued development and utilization of the State's mineral resources, to the jobs and incomes of its residents, and to the public revenues used to support education and other public services.

**COMMISSION RECOMMENDATIONS**

- 13a** *The Governor and Legislature should recognize through a Legislative Resolution the vital services that the mining, geological and petroleum engineering programs of the University of Alaska system provide to the state of Alaska.*
- 13b** *The Governor and Legislature should provide adequate budgetary support to the mining, geological, and petroleum engineering programs throughout the University of Alaska system.*

**STATE LABOR ISSUES**

**FINDING 14.** Legislation allowing a flexible work week and extending underground working hours is important for the viability of mines in remote locations. Properly-drafted legislation would provide employers and employees with the flexibility to jointly determine work schedules that would enhance efficiency and provide for more desirable time-off patterns for employees. A recent joint program in British Columbia between private industry, the B.C. Ministry of Mines, and the U.S. Bureau of Mines has demonstrated the utility, safety, and desirability of extended underground work shifts.

**COMMISSION RECOMMENDATIONS**

- 14a** *Legislation should be enacted to allow work schedules to be set on the basis of project-specific considerations which will permit more efficient use of labor and provide more desirable time-off patterns for employees. AS 23.10.060 currently provides opportunities for flexible work plans at small seasonal mining operations and for surface mines. These same opportunities should be extended to all mining operations without regard to size, type, and/or seasonal nature of the work.*
- 14b** *Legislation should be enacted to amend current statutes limiting underground shifts from the current maximum of eight hours to a maximum of twelve hours, similar to SB 295 of the 17th Legislature.*

## PART B: FEDERAL ISSUES OF STATE CONCERN

### TAILING DISPOSAL OPTIONS

**FINDING 15.** Disposal of mine tailings is commonly one of the more significant issues to be resolved in mine permitting. This issue has been especially contentious with the A.J. Mine project at Juneau. Historically, many millions of tons of mine tailings and waste rock from the A.J. and Treadwell Mines were disposed of in the nearby Gastineau Channel.

Modern mining operations have developed an improved version of this termed Submarine Tailings Disposal (STD). This process allows mine tailings, which can be clearly demonstrated to have no deleterious effects, to be discharged through an engineered and permitted outfall into deep marine waters. Such an engineered outfall has been used in coastal British Columbia at Island Copper since 1976 with negligible, long-term, deleterious effects.

Before this method of tailings disposal may be considered as an option for the A.J. project the U.S. Environmental Protection Agency (EPA) must institute a rule-making change. Such a change will then allow the full investigation of STD through the Environmental Impact Statement process along with other disposal options. This rule is currently being contemplated by the EPA specific to the A.J. situation.

### COMMISSION RECOMMENDATIONS

- 15a** *The Governor and the Legislature should work with the Congressional Delegation to fully support and encourage the Environmental Protection Agency to adopt the necessary rule changes which will allow Submarine Tailings Disposal to be investigated as part of the Supplemental Environmental Impact Statement for the A.J. project.*
- 15b** *The Governor should continue to support the Technical Review Team established by the State to review the investigation of Submarine Tailings Disposal as a potentially viable disposal option.*

### MINING LAW OF 1872

**FINDING 16.** Changes to the 1872 Mining Law have been proposed in Senator Frank Murkowski's Senate Energy and Natural Resources Committee and in Congressman Young's House Natural Resources Committee. These bills, SB506 and HR1508 respectively, are similar, and make the needed and reasonable changes to the federal mining law.

### COMMISSION RECOMMENDATIONS

- 16** *The Governor, in conjunction with the Congressional delegation and the Western Governors Association, should give continuing support to the changes in the Federal Mining Law embodied in SB 506 and HR 1508 that would allow continued, responsible mineral development on federal lands in Alaska.*

### ANILCA PROVISIONS

**FINDING 17.** In order to assure passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980, there were several sections included to protect preexisting rights. Several provisions would allow mineral development on or near otherwise withdrawn land. Title M addressed access across the Conservation System Units (CSU). Sections 101d and 132b assured that no more land in Alaska would be

considered for new CSU or similar designations. Sections 103b and 1302h provided a mechanism for the Secretary of the Interior to adjust the boundaries of CSU or to exchange lands within them to exclude mineralized areas.

#### COMMISSION RECOMMENDATIONS

- 17** *The Governor and Legislature, by Executive Order and Legislative Resolce, working through the Attorney General's office, the State's Washington office, and the Congressional Delegation should insist that the federal administration:*
- a** *provide access across Conservation System Units (CSU) as required by Title XI of the Alaska National Interest Lands Conservation Act (ANILCA);*
  - b** *prohibit the creation of additional CSU lands in Alaska as required by Sections 101d and 1326b of ANILCA; and*
  - c** *exchange mineralized areas from existing CSU under the authority of Sections 103b and 1302h of ANILCA.*

#### INTERNATIONAL PARKS IN ALASKA

**FINDING 18.** Recent federal actions have proposed Beringia Heritage International Park on both sides of the Bering Straits. On June 23, 1995, the World Bank proposed an effort to preserve marine-protected areas including the Bering Strait and Katchemak Bay with funding schemes including development taxes and fees on those who use marine resources, such as fishers and tourists. Federal actions have proposed a park which would include the Windy Craggy copper deposit in British Columbia and the lands in the Wrangell-St. Elias National Park in Alaska. These actions would adversely impact Alaska through loss of future revenues promised under the Statehood Act, would result in negative impacts on adjacent lands and landowners, would restrict or deny access and resource development, and would violate the "no more" clause of the Alaska National Interest Lands Conservation Act (ANILCA). Such international classifications are politically irreversible and effectively give up Alaska sovereignty over affected lands since management and protection of the sites would be under the direction of international organizations.

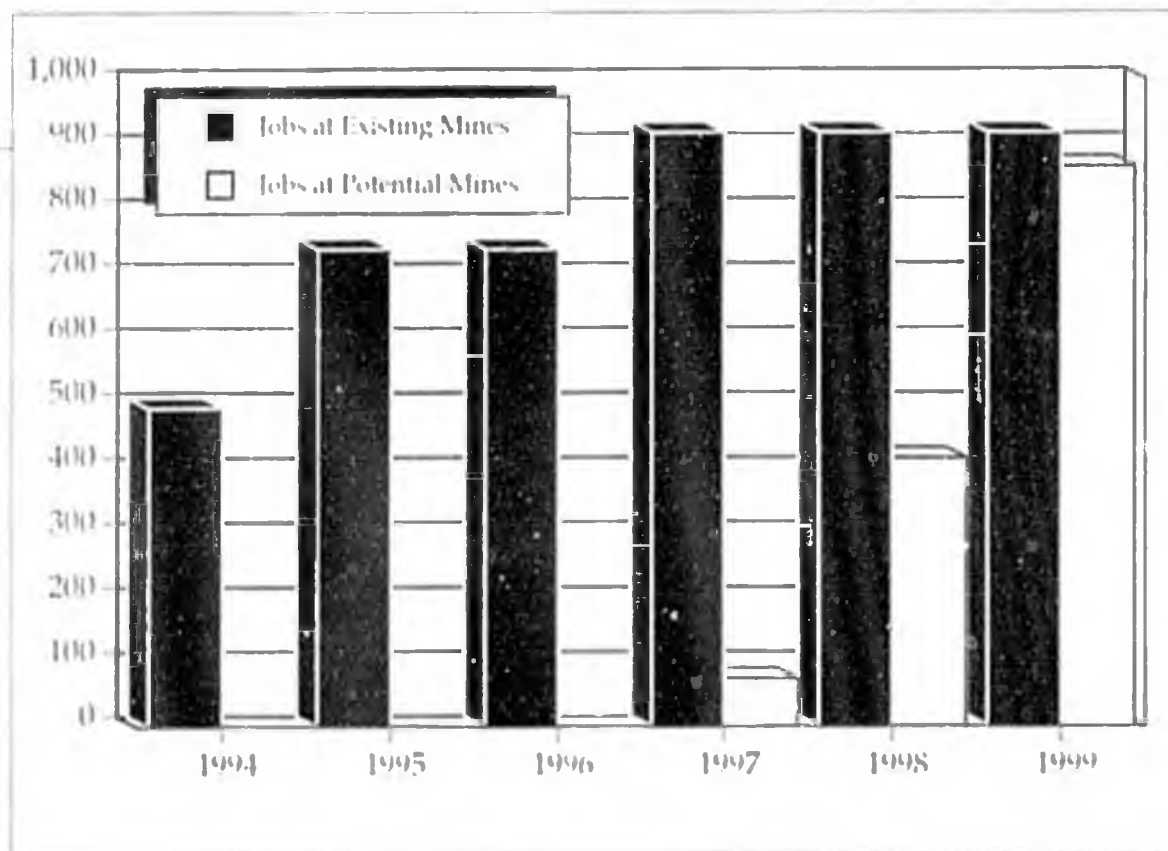
#### COMMISSION RECOMMENDATIONS

- 18** *A Legislative Resolce and an Executive Order by the Governor should be enacted to vigorously and resolutely oppose the creation of any International Park, World Heritage Site or International Marine Biosphere Reserve in Alaska or in the waters adjacent to Alaska*

**APPENDIX:**  
**GRAPHS SHOWING CURRENT STATUS AND**  
**EXPECTED TRENDS IN ALASKA HARDROCK MINING**

**NUMBER OF JOBS IN HARD ROCK MINES\***

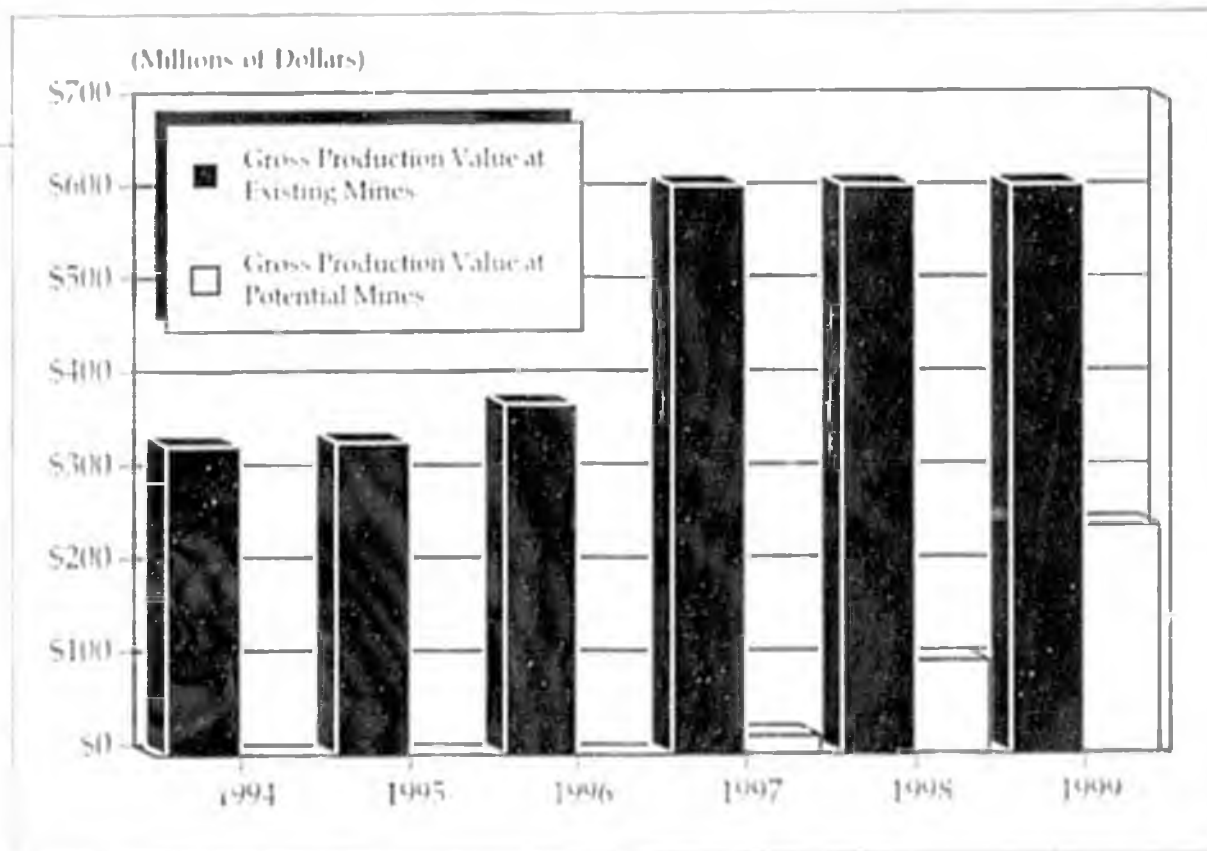
	1994	1995	1996	1997	1998	1999
<b>Existing Mines</b>						
Red Dog	393	393	393	393	393	393
Greens Creek	70	70	70	250	250	250
Nixon Fork	10	45	45	45	45	45
Fort Knox	20	230	230	230	230	230
Subtotal	493	738	738	918	918	918
<b>Potential Mines</b>						
Illinois Creek	-	-	-	75	75	75
Kensington	-	-	-	-	340	340
A-J	-	-	-	-	-	450
Subtotal				75	415	865
<b>Total</b>	<b>493</b>	<b>738</b>	<b>738</b>	<b>993</b>	<b>1,333</b>	<b>1,783</b>



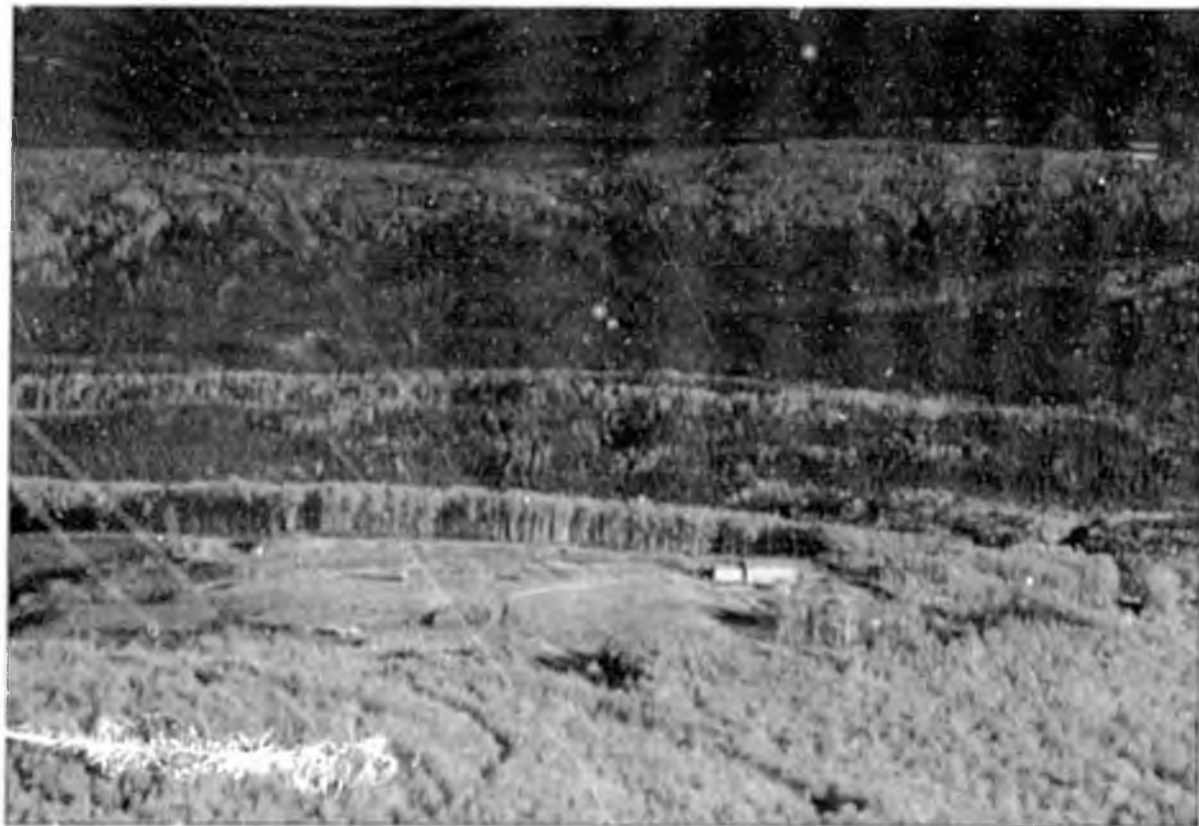
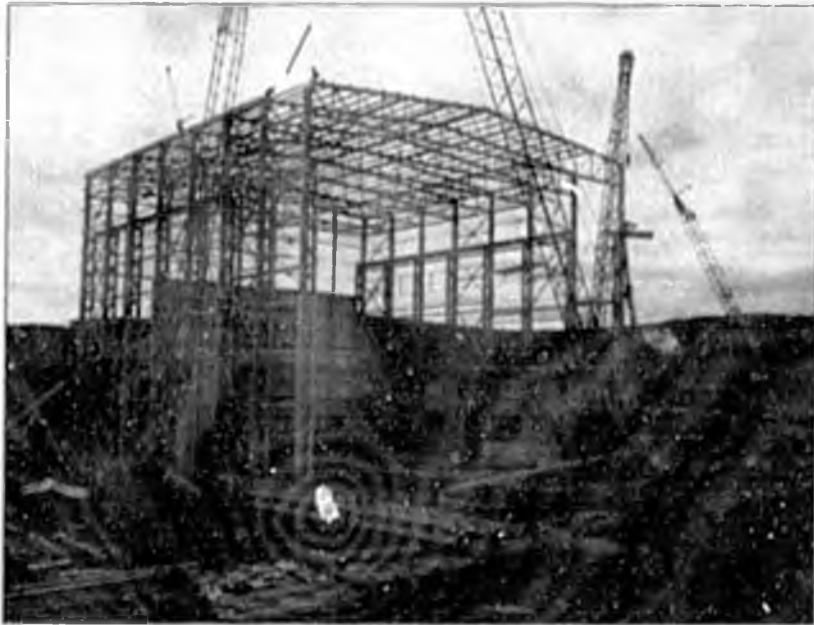
\* Based on the assumption that these projects are permitted in a rational and timely manner

**GROSS VALUE OF HARD ROCK MINERAL PRODUCTION (\$ Millions)\***

	1994	1995	1996	1997	1998	1999
<b>Existing Mines</b>						
Red Dog	332	332	332	332	332	332
Greens Creek	-	-	-	114	114	114
Nixon Fork	-	4	20	20	20	20
Fort Knox	-	-	24	144	144	144
Subtotal	332	336	376	610	610	610
<b>Potential Mines</b>						
Illinois Creek	-	-	-	20	20	20
Kensington	-	-	-	-	80	80
A-J	-	-	-	-	-	144
Subtotal	-	-	-	20	100	244
<b>Total</b>	<b>332</b>	<b>336</b>	<b>376</b>	<b>630</b>	<b>710</b>	<b>854</b>



\* Based on the assumption that these projects are permitted in a rational and timely manner.



**SB**

**243**

# FISCAL NOTE

BILL NO. SB 243

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources  
 Title: An Act establishing a requirement of an BRU: Resource Development  
annual offer of land for oil and gas leases if the land... Component: Oil & Gas Development  
 Sponsor: Senate Resources  
 Requestor: Senate Resources Component Serial No. 439

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES	559.7	559.7	559.7	559.7	559.7	559.7
TRAVEL	22.0	22.0	22.0	22.0	22.0	22.0
CONTRACTUAL	30.3	30.3	30.3	30.3	30.3	30.3
SUPPLIES	18.0	18.0	18.0	18.0	18.0	18.0
EQUIPMENT	79.0	12.0	12.0	12.0	12.0	12.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>707.0</b>	<b>640.0</b>	<b>640.0</b>	<b>640.0</b>	<b>640.0</b>	<b>640.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF	707.0	640.0	640.0	640.0	640.0	640.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>707.0</b>	<b>640.0</b>	<b>640.0</b>	<b>640.0</b>	<b>640.0</b>	<b>640.0</b>

Estimate of any current year (FY96) cost: \$ none

POSITIONS	FY97	FY98	FY99	FY00	FY01	FY02
FULL-TIME	11	11	11	11	11	11
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

Eleven additional positions within DO&G will be require to implement the areawide oil and gas leasing program as proposed in SB 243.

Three new Natural Resources Officer II's, range 16 , to determine land ownership, title conflicts, correct title faults, and prepare detailed land title reports, prepare and issue public notices under AS 38.05.945-946, prepare and organize the annual oil and gas lease sale offerings, and to adjudicate bids and determine successful bidders for lease issuance.

Three new Natural Resources Officer I's, range 14, to perform the land title and status reviews, assist in determining land and ownership boundaries, determine tract acreages, prepare lease sale tract maps and plats.

Prepared by: Ken Boyd, Director *Ken Boyd* Phone: 286-8800  
 Division: Oil & Gas Date: 6-Feb-98  
 Approved by Commissioner: *Med Bligh* Date: 6-Feb-98  
 Agency: Natural Resources

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**ANALYSIS SB243 CONT.:**

Two new Natural Resources Officer II's, range 16, positions to research, write, and regularly revise areawide best interest findings.

One new Natural Resources Officer I, range 14, to assist with research and minor writing tasks in support of best interest findings and responding to public concerns.

One new Cartographer I, range 12, to assist in the preparation of maps, charts and diagrams for best interest findings, geologic analysis, public notices, and lease sales.

One new Petroleum Geoscientist, exempt range 24, to continuously review and evaluate geologic, well and seismic data, and to maintain information database.

The request for these positions are predicated on the following:

- 1) the need for additional best interest findings for a new oil and gas leasing program that is to be managed simultaneously with the five-year oil and gas leasing and exploration licensing programs. Existing staff is insufficient to research and draft preliminary and final findings for all programs.
- 2) Additional title and land status review, mapping and legal description writing staff will be needed to review ownership and conflicts for the new lease sales and new biennial report to the legislature. Existing staff is insufficient to manage this significant new program in addition to five-year leasing and exploration licensing programs. Title, land status, and description writing for areawide leasing on the onshore portion of the North Slope can be completed after bids are received on tracts thus saving the costs of this type of work on tract that will receive no bids. However, due to the complexity of title, lands status and concerns of adjacent land owners this approach will not be advisable in the Cook Inlet and Beaufort Sea areas. The laborious and time consuming process of reviewing these issues for each tract prior to any lease sale will by necessity be continued. This will require the review of approximately 15-25 million acres of land annually.
- 3) An increase need for maps, notices, graphics and new biennial report to the legislature.
- 4) an annual detailed geological evaluation of 15-25 million acres in order to take into consideration new well and seismic data to aid in determining the best terms of sale for specific areas.

Travel costs include costs for staff to attend public hearings, meetings and workshops in affected areas.

Contractual cost included office space, printing and publishing of public notices and display ads.

supplies costs include misc. costs for paper, pens, floppy disks and other misc. supplies.

equipment costs include phones, desks, computers, printers and other misc. equipment.

\*\* There are uncertainties in the bill which may change the fiscal impact once clarified with the sponsor.

ARCO Alaska, Inc.  
 Testimony: SB 243 "area wide BIF, leasing"  
 02/14/96

Mr. Chairman, for the record, my name is David Sutter. I am the Land Manager for ARCO Alaska. I have a few general comments about area wide leasing.

For nearly a year, ARCO has been suggesting that the State adopt an "area wide" concept in its lease sales in areas that have had significant past discoveries and are known to be highly prospective for further oil discovery: for example, the onshore North Slope between the Colville and Canning Rivers and north of the Umiat baseline - essentially the area excluded from exploration licensing. The heart of our concept is for the State to make all unleased tracts in an area available for bidding each and every year.

What I would suggest in determining what the legislation should say is as follows:

- The legislature should mandate annual North Slope and Cook Inlet Area wide Lease Sales, provided the necessary Best Interest Finding supports such sales
- North Slope and Cook Inlet Area wide Lease Sale areas should be defined as those upland areas which are excluded from licensing
- The North Slope Area wide Lease Sale should occur no later than 1998 (Sale 87 - March)
- The Cook Inlet Area wide Lease Sale should occur no later than 1999 (Sale 85 - August)
- Area wide BIF's for the NS and CI should commence immediately
- Area wide BIF's should cover an area for at least ten years
- Area wide BIF's should cover all lands within the geographic sale area, regardless of current lease status or ownership
- Comments for new information should be solicited annually for the Area wide BIF's

Post-It® brand fax transmittal memo 7871		Total pages - 2-	
To	Simon	From	David Sutter
Co	Exxon Resources	Co	
Dept.		Phone #	
Fax #		Fax #	

- The commissioner of DNR should have discretionary authority to determine if new information requires a change in the BIF prior to the ten year period.
- Area wide Lease Sale ACMP Consistency Determination should automatically be granted if the Commissioner of DNR determines that the call for new information falls to require a new BIF
- Legislation must not require additional regulations (we're concerned that section 1 of your draft bill may contain a requirement to draft such regulations)

While I believe that this legislation will encourage more activity in those areas covered by area wide leasing, the real benefit will ultimately go to the State. Once an area wide leasing program is in place, the State will have more time to develop sales and issue licenses in those areas within the State where oil and gas activity may be less prevalent, but where the potential rewards for finding large fields are substantially greater.

Mr. Chairman, I want to thank you for the opportunity to speak on behalf of ARCO regarding this important legislation. I would be happy to answer any questions you may have.

### Area-Wide Leasing Bills -- Comparison

	SB 243 -- Senate Resources	SB 245 -- Governor's bill	HB 388 -- Rep. Rokeberg
<b>Geographic Application</b>	Cook Inlet, North Slope	North Slope onshore, north of the Umiat baseline	Area authorized by Legislature
<b>Applicability to 5-Year Sale</b>	Areawide lease sales consist of acreage annually nominated by Commissioner and industry, in addition to 5-year lease sale program	Areawide lease sales done by Commissioner as part of 5-year lease sale program	After authorization by the Legislature -- unclear if annually or as part of 5-year lease sale process
<b>Best Interest Finding Provisions</b>	BIF not required if acreage previously offered in a sale under AS 38.05180 (d) or SF.05.180 (w) or is part of an areawide lease sale; unless in all cases Commissioner determines that new information is available that justifies revision of BIF	5-year limitation of life of BIF	Companion piece: HB 389 -- For exempt sales (38.05.180 (d)) or sales under 38.05.180(w), the new information justifying the revision must be along the lines of the fact required under AS 38.05.035(q)(1).
<b>Land Offered for Sale</b>	New BIF not required if acreage previously offered in a sale	New BIF not required if acreage had been subject to BIF in last five years. Not required to have been previously offered for sale.	New BIF not required for areawide lease sale unless subject to new information.

Also, the Governor's bill contains 1 1/2 pages of findings and purposes which do not address the reality of creating new 5-year best interest findings for an area which encompasses leases that don't expire for another 9 years. There is no structure

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Rev. 6-98

Central Microfilm Services  
Department of Education  
State of Alaska

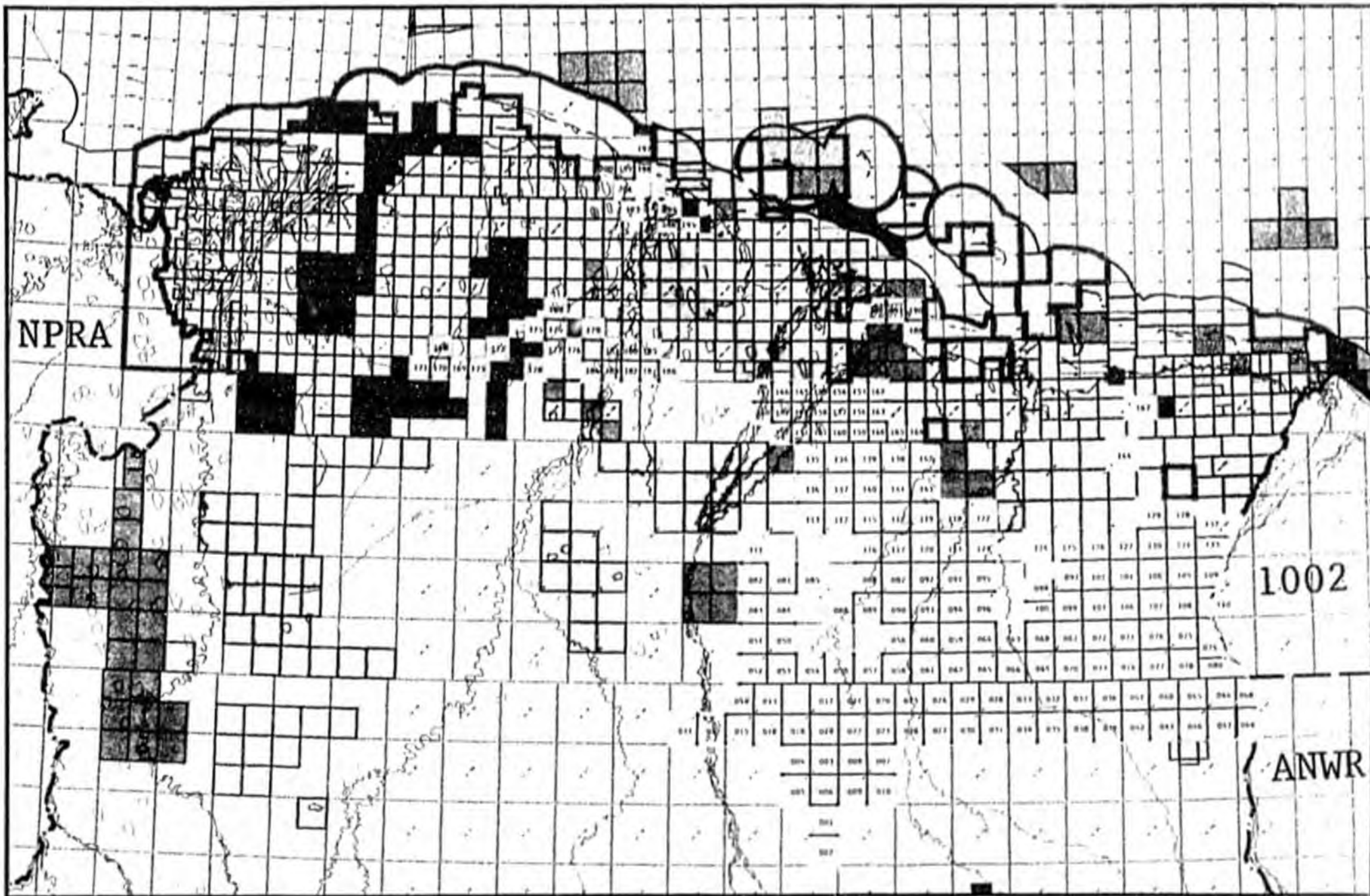
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<b>Land Offered for Sale</b>	New BIF not required if acreage previously offered in a sale	New BIF not required if acreage had been subject to BIF in last five years. Not required to have been previously offered for sale.	New BIF not required for areawide lease sale unless subject to new information.

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**ALASKA LEASING IDEAS**  
**SENATE RESOURCE COMMITTEE**

**September 12, 1995**



NPRA

1002

ANWR

Sale 80



Sale 86

**ALASKA LEASING IDEAS  
OIL AND GAS POLICY COUNCIL**

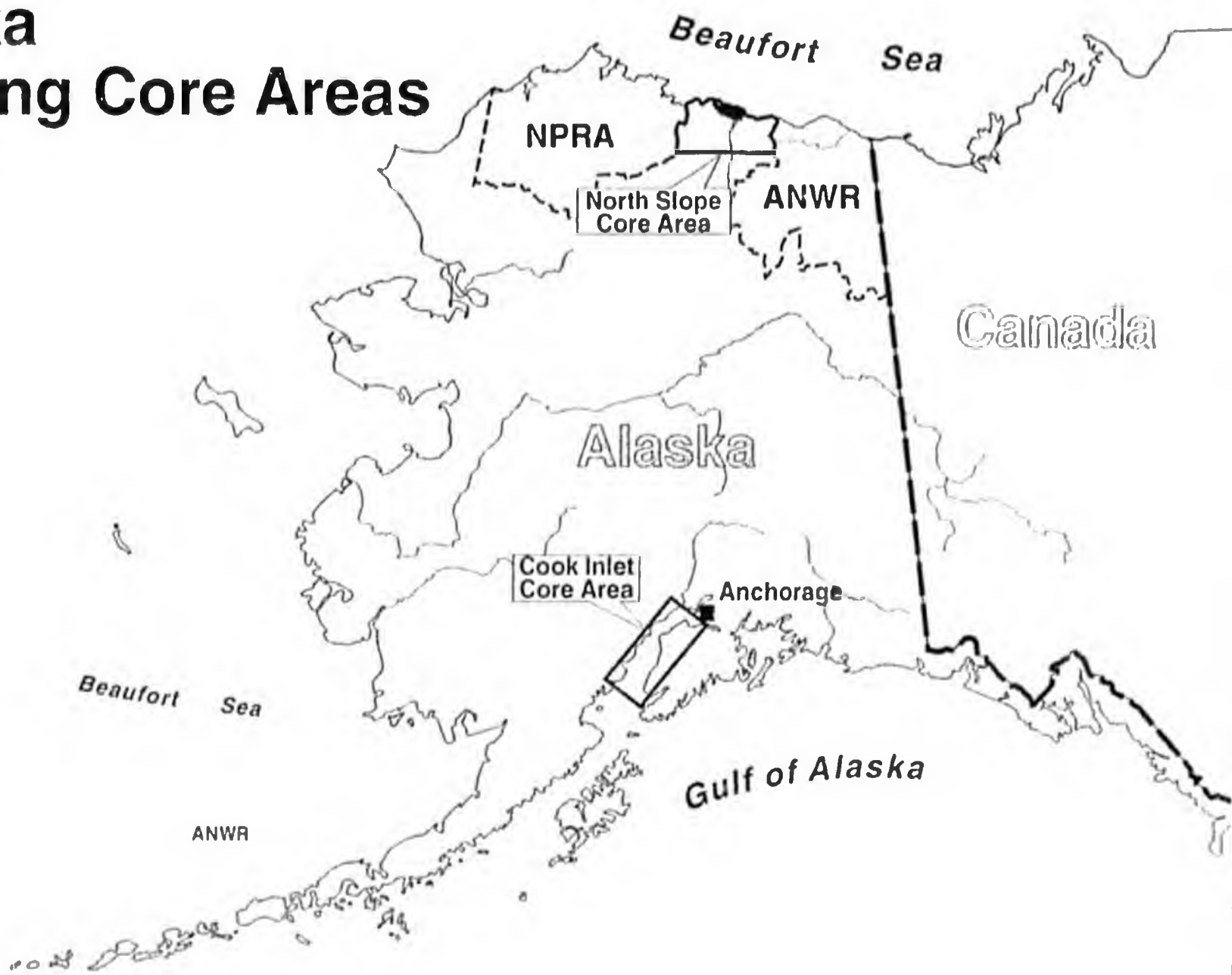
**August 21, 1995**

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Identify Core Areas within Alaska where it is clearly in the best interest of the State to conduct lease sales.

# Alaska Leasing Core Areas

200 Miles



August 21, 1995

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## PROPOSED CORE LEASING AREAS

- **North Slope**

All State of Alaska uplands lying north of the Umiat Baseline, between the Colville and Canning Rivers.

- **Cook Inlet**

All State of Alaska uplands and submerged lands lying in the area bounded to the north by the northern boundary of T17N S.M. and bounded to the south by the southern boundary of T6S S.M., bounded to the east by the Seward Meridian, and bounded to the west by the western boundary of R19W S.M.

ALASKA LEASING IDEAS  
OIL AND GAS POLICY COUNCIL

August 21, 1995

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Incorporate MMS Philosophy used in the Gulf of Mexico for State of Alaska lands in designated core areas.

1. Best interest finding in core areas would be updated every five years to account for any changes.
2. Offer the core areas for area-wide leasing on an annual basis with a set time of the year in which the sale will occur.
3. Delete only those areas within the core area that are environmentally sensitive or require further action from DNR, i.e., surface area consent, etc.

ALASKA LEASING IDEAS  
OIL AND GAS POLICY COUNCIL

August 21, 1995

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By having annual sales, DNR could consider shorter lease terms for core area lease sales.

ALASKA LEASING IDEAS  
OIL AND GAS POLICY COUNCIL

August 21, 1995

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Require industry to be more specific in identifying level of interest in non-core areas.

**ALASKA LEASING IDEAS  
OIL AND GAS POLICY COUNCIL**

**August 21, 1995**

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Drop or eliminate sales in non-core areas where there is little or no industry interest. Supplement those areas with licensing if necessary.

ALASKA LEASING IDEAS  
OIL AND GAS POLICY COUNCIL

August 21, 1995

---

Give DNR more authority to consider different royalty schemes  
on licensing requests.

**ALASKA LEASING IDEAS  
OIL AND GAS POLICY COUNCIL**

**August 21, 1995**

---

Avoid using lease sales to invoke operational stipulations for areas affected by leasing.

**ALASKA LEASING IDEAS  
OIL AND GAS POLICY COUNCIL**

August 21, 1995

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## **CONCLUSION**

1. Identify core leasing areas within Alaska.
2. Use an area-wide leasing program for the core areas.
3. Give the DNR flexibility to do their job.
4. Work on comprehensive regulations instead of lease stipulations.

PRELIMINARY REPORT TO  
SENATOR LOREN LEMAN, Chairman  
Senators: Pearce, Frank, Halford, Taylor, Lincoln and Hoffman  
SENATE RESOURCES COMMITTEE  
By: Senate Resources Committee Staff

Work Sessions with Oil and Gas Industry on Best Interest Finding and Permitting

At your request, I held a work session with representatives of the oil and gas industry and others (list attached) in Anchorage August 8. Another work session dealing more specifically with permitting and projects in coastal zones is scheduled for September 8. An update to this preliminary report will be finished for your use September 11. This report only reflects my interpretation of the comments of those who attended the work sessions.

Best Interest Finding

- 1) The companies and the state want certainty to the best interest finding process. There are two slightly different viewpoints on "areawide best interest finding":
  - a) do a BIF on a chunk of geography, the BIF applies to lease sales in the next 3-5 years, area broken up by the state into lease tracts; and
  - b) Entire North Slope BIF and allow companies to competitively bid for larger areas (instead of 63 tracts, would be one tract or 10 tracts). I believe DNR and industry view this process slightly differently.

Some commented that the BIF adopted in SB 238 (CH 34, SLA 94) lengthens the permitting process with no positive result - it has become a delaying tactic. All who commented said SB 308 (CH 38, SLA 94) was a good start to addressing the problems of continual lawsuits aimed at delaying or derailing development projects. However, they see no value in having to address tract by tract factors which could be addressed in a uniform best interest finding. They said this uniform or areawide best interest finding should/could be done in areas where the factors affecting development are fairly uniform. The Colville/Canning rivers area was mentioned as one area where from the permittee perspective, the factors affecting a permit to operate are relatively uniform. The permittees said that rather than working with the permittees to mitigate concerns, some regulating agencies' (esp. DEC and F&G) seem to be more focused on thinking up not just reasonably foreseeable measures, but mitigation measures for minute concerns such as "isostatic rebound" in the comments on preliminary findings for the Yakataga Sale (copy attached). Companies state that if they don't "aggressively" track every mitigation measure, a mitigation measure becomes a "permit standard" by default of the company not being aware or believing that it wouldn't be kept in the final permit. This "permit standard" is then applied to succeeding permits.

- 2) The interest in re-evaluating how best interest findings are done seems to reflect the companies experience with downsizing and having to become more efficient at reducing operating costs. In the work session, a DNR/DO&G representative commented about reduced budgets and the need to be more efficient - the reaction was nods from around the room. Most agreed the first areawide BIF would be expensive. Paperwork would be voluminous, but those proposing it believe the resulting benefit is efficiency for DNR to be able to lease more land. Jack Chenoweth, LAA/Legal states "no prohibitions" as far as he can see, providing there is a lease sale of the area for which the BIF is done. His only

concern was in AS 38.05.035 (e)6(g): exempt sale under 180(d) sale within previous 5 years and AS 38.05.035(e)6(h): sale under 180(w) sale within 5 years is subject to BIF.

3) Jim Eason, consultant at the work session, mentioned a bifurcated best interest finding process. This would require rewriting the BIF provisions to allow sale areas where a final BIF has been accepted and upheld without challenge or if challenged and subsequently upheld, no additional findings would be required, unless the commissioner (of DNR) determines in his discretion that additional findings are necessary. Sale areas that have never gone through a BIF could be done under an areawide BIF which would require the entire AS 38.05.035 process.

4) Some of the smaller operators felt the 5-year oil and gas lease sale process is too long, but because a sale can be added so that it's on the lease sale schedule for only three years, this did not seem to be such a problem. State is trying to get companies to be more forthcoming about the areas they want to lease. (Pretense of nonchalance or active bluffing may result in leases being dropped from a sale.) This is where the areawide BIF is attractive to the strategic, secretive nature of the oil industry. If the second option mentioned in item 1 is chosen, a company could place sealed bids for any tract(s) in the area covered by the BIF - the larger the area of the BIF and the sale, the better for the company's strategy.

#### Permitting

1) The September 8 meeting will reveal more details, but in short there are questions about the ability of government departments to be efficient in permitting matters. There is perceived distrust among agencies. Instead of phoning or faxing for additional information, letters are sent to permittees resulting in additional time delays. The departments don't seem to realize that outside of government most matters are dispatched with a quick (documented) phone call or fax. Even the most important/sensitive answers can be readily attained with a phone confirmation that a fax was received. Problem with getting industry to speak about these problems on the record is the perceived threat of retaliation by the permittor.

2) Concerns and real-world problems are concentrated in several areas:

- a) Lots more days are being tacked onto the permitting process - agencies say they can't meet the 5-day deadlines to issue permits once coastal zone requirements are met;
- b) No comment from agencies until the last day for review.
- c) Air Quality Permitting: Amount of time it is taking for permit evaluations not satisfactory. Consensus that inexperienced staff, plus reorganization at DEC may be hampering this permitting program.

3) Shared Costs. Under this arrangement, a company purchases expedited permits. Agencies say otherwise it's first come first served. This shared cost arrangement expedites permits, but raises eyebrows because:

- a) concern that state employees are under pressure to overlook infractions in order to process the permit which was paid for;
- b) concern about inexperienced employees taking too long to do what private sector counterparts do in less time;
- c) concern about the "message" of industry financing the expedition of permits;
- d) concern about departments blackmailing industry to pay for full time positions "necessary" to expedite permits.



38) Isostatic rebound as a source of geologic instability was not mentioned. To what extent would the slow rising of lands recently covered by glaciers, threaten the integrity of pipelines, wells, or other facilities.

Response: The above comment is not material to the scope of this finding. Although there may be gradual isostatic uplift in this region, about 1 cm/yr. for the past 5,000 yrs. (Combellick, memorandum to Hansen, citing to Plafker 1980, 1994), most of the uplift probably occurs suddenly during great earthquakes. Any hazard to engineered facilities from uplift would not be significant and will likely be overshadowed by other earthquake effects, such as strong shaking, seafloor failures, and tsunamis (Combellick, DGGG, 1994a). Since facilities within the Sale 79 area would be designed to withstand earthquakes, they would be able to withstand gradual isostatic uplift.

Other Response see DGGG Report 10 Yakutat - Sale

**For: Senate Resources Committee  
February 14, 1996  
SB 243 and SB245: Areawide Leasing/Best Interest Finding bills**

**THE ATTACHED IS AN EXCERPT FROM MINUTES OF THE  
AUGUST 21, 1995 MEETING OF THE GOVERNOR'S OIL AND GAS  
POLICY COUNCIL**

**THE EXCERPT COVERS THE PORTION OF THE MEETING  
DEDICATED TO LEASING AND BEST INTEREST FINDING**

The Council recessed for lunch at noon and reconvened at 1:00 pm.

#### 6. Leasing and Best Interest Finding Presentation, DNR

Ken Boyd said that getting land out for lease to industry is a primary concern for DNR. There are about 1000 leases in the State, about 3.5 billion acres total and the State has been leasing since 1959.

Jim Hansen, from DNR, described the lease sale process noting that it begins with a 5 year lease program. All of the acreage on the North Slope and offshore will have been offered for lease by the end of 1999. The State is counting on the Dinkum Sands lawsuit to be resolved before the offshore sales are offered. The 5 year program is published at the beginning of each Legislative session, every two years. This plan is put together from State information and expressed industry interest in certain lands.

Six months before the book is published there is a public call for comments which is for 60 days. A second call for comments, for a five month period, is made 3 to 3.5 years before the sale. The final call for comments occurs about 22 months before the sale and is a 60 day period. These three calls include public, industry and government comment and input. The preliminary best interest finding is issued about 9 months prior to the sale and contains all of the required information through the exploration phase and it must include transportation. The preliminary finding goes out for a 60 day comment period with local area hearings as well as public comment. Four months prior to sale a notice of intent to issue a final finding is made and the final finding is issued three months before sale. There is a 20 day reconsideration period to the Commissioner of DNR and after that any appeal is to the court. This process spans 5 years with four comment periods and a reconsideration process in a normal sale. Lately very few sales have been normal.

The findings contain all of the mitigation measures for exploration and development. In addition, there is the Alaska Coastal Management Process which melds with the State's sale process.

Asked by Cline about coordination with federal schedules, Hansen replied that it was very difficult to do so as federal schedules are even more erratic than the State's. He continued that SB 308 has lengthened the leasing process by adding more time for public comment but has limited the lawsuit process by mandating that only a person who has participated in the public process may file an appeal or reconsideration.

Larry Ostrovsky from the AG's office reviewed some of the legal issues and litigation background on leases. Of the 71 lease sales since 1959, there have been 8 which resulted in lawsuits and 6 of those have gone to the Alaska Supreme Court. Only one

lease sale has been stayed and that was last year. These things, however, do tend to be in litigation for many years and thus delay sales. The result of the litigation is the "G" list, a list of 11 factors which DNR must consider in its findings.

Asked by Ken Thompson about sales and suits after 1985/86, Ostrovsky replied that there had been 22 sales and 4 lawsuits. Asked by Esther Wunnicke whether any thought had been given to alternate dispute resolution, Ostrovsky replied not that he was aware of.

Drue Pearce left at 2:00 p.m.

Patty Bielawski, special assistant to Commissioner Shively, has been working on the best interest finding process. DNR is looking at litigation history for which issues are brought to court and what can be done in the finding process to minimize litigation and also what alternatives are available to today's process. Areawide findings are being discussed by the Department, but it is only beginning to work on it. Asked how "areawide" would be defined, by Frey, Bielawski said that DNR does not have an answer to that and is interested in listening to ideas.

Brown asked if DNR felt that some of their lease work was not what industry wanted and Boyd replied that was evident with the two no-show sales held. Industry needs to be more specific about their areas of interest, he said. Regarding areawide findings, Boyd felt that it would be both possible and beneficial to everyone involved to conduct areawide findings. Perhaps, he said, they would be good only for a period of two or three years with re-examination at that point.

#### 7. Leasing Issues, Dave Sutter, ARCO

Dave Sutter, Land Manager for ARCO, spoke to identifying core areas within Alaska where it is clearly in the best interest of the State to conduct lease sales. The two core areas which have been identified are the North Slope and Cook Inlet. The North Slope is the least controversial and most important and he would use the legislative definition for licensing of those areas as a starting point for establishing an areawide best interest finding. Using the onshore area between the Canning and Colville Rivers north of the Umiat basin is the heart of oil country.

Once the core area has been established and the common best interest finding in those areas, the next step might be to adopt an areawide lease sale philosophy. MMS, in the Gulf of Mexico, sets up a regular annual lease sale schedule for a date which industry can count on from a budget standpoint for expenditure and availability of prospects for work scheduling. He would propose updating the best interest finding at least every 5 years, perhaps it would need to be moved up, for legal reasons, to annually. But, rather than starting a new finding for each

lease sale, an update would be done.

These areas would be offered at a set time, he would suggest summer for more interest because of budget timing, and those areas of controversy because of environmental reasons or surface or subsurface ownership would be deleted. Establish the larger area first and then delete those in conflict.

Larger lease areas need to occur, he said, as it is very difficult to put a prospect together if the acreage involved is contained in two separate lease sales; sale areas need to be larger.

A consistent lease sale schedule is of utmost importance Sutter said, and also suggested shortening the primary lease terms to three to five years stating that if a member of industry cannot get to it in 3 years on the North Slope then it needs to be in the hands of someone else who can. Industry should be required to be more specific in identifying their level of interest in non-core areas. If there is only one interest expressed at a sale, or none, then DNR should look at licensing the area.

With respect to licensing, DNR should be given more authority to issue licenses with different royalty schemes. Operating stipulations should probably be taken out of leases and put into regulations so that they apply to a whole field rather than individual leases.

In conclusion, Sutter said that DNR does a great job of enforcing the regulations in Alaska, probably better than any other place in the United States, but they need a little more flexibility in doing so.

Ken Thompson asked what the independent reaction to areawide findings were in the Gulf and Sutter replied that there was a huge influx of independents when this was done.

#### PUBLIC COMMENTS

Jack Roderick stated that in 1978 he drafted the law which became the leasing program. The ideas he has heard this afternoon are good, he said, as independents will come if they can depend on regular lease sales. The areawide finding is an excellent idea and he would like to see the State return to an system which is not completely bonus bidding.

Dave Lappi of Lapp Resources said that he felt independent participation would increase if the system were not completely bonus bid. He also felt that changing the minimum bid on short term leases to \$1 per year per acre would be of great assistance.

Charles McGee posted a 1980 Alaska map and spoke on various aspects of State government.