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another way, in order to know the means that a person intends to employ to achieve a purpose, it is not sufficient to know only the purpose.

Having concluded (wrongly) that Congress' purpose for passing the Reindeer Act was to banish forever non-Native persons from the reindeer industry in Alaska, the IBLA assumes that Congress must have intended to employ every conceivable means that would contribute to the attainment of this purpose. Thus, according to the IBLA, Congress must have intended to include in the Reindeer Act a provision banning the importation of non-Alaska reindeer by non-Natives in Alaska. However, the legislative history instructs us that Congress did not extend the limited restrictions in the Reindeer Act to impose a total ban on non-Native purchase or ownership of reindeer, regardless of the source of the deer, because of its concern that the Reindeer Act not run afoul of the United States Constitution. During the debate that preceded House passage of the bill, the following exchange occurred:

Mr. CRAWFORD. Does the gentleman really believe that we can in the future enact legislation which will prevent a white man from owning and operating a herd of reindeer in Alaska?

Mr. DIMOND. The categorical answer to the question is "yes," because 99.8 percent of all of the land in Alaska, and a little more perhaps, still belongs to the United States Government, and the Government has full right of control of all the range.

* * * * *

Mr. DIMOND. Mr. Speaker, if this bill passes, the Government can control the range so that the provision of the bill forbidding white men to go back on the range can be lawfully enforced without any infringement of the Constitution.

81 Cong. Rec. 9472-73. To the same effect was this exchange between the Chairman of the Committee on the Territories, Representative John E. Rankin, and Delegate Dimond in a hearing before that committee:

THE CHAIRMAN. If we were to pass this bill and they should buy up the interests of the nonnatives in reindeer and turn them over to the natives, does not the bill have a clause that would prevent the non-resident or nonnative from again embarking in the reindeer business?

MR. DIMOND. Yes.

THE CHAIRMAN. If it does, would that be operative? Mr. Rankin is a better lawyer than some of us.

MR. RANKIN. The Territory of Alaska from a constitutional standpoint is in the same position as is the District of Columbia. The question of States' rights does not intervene. We have all the power in the Territory that the State government and the Federal Government combined have in a State.

THE CHAIRMAN. It would be quite drastic to keep somebody from going there and engaging in business.

MR. DIMOND. The only place where reindeer can graze is on the public domain. Nobody can use the public domain without the consent of the Government if the Government wants to exercise its undisputed authority. Therefore if a white man, after the passage of this bill, wanted to graze reindeer on the public domain, he would have to get a permit from the Government to do so.

MR. RANKIN. Of course, one cannot say to a man that he may not go into the State of Florida and acquire and hold property; but if it is a matter of the public domain one can be kept off it by proper restrictions. Frankly, I do not think you need worry about outsiders going to Alaska for the purpose of engaging in the reindeer business.

Mr. GORDON. I should like to invite attention to an analysis of the bill on that point. The bill in providing for the Eskimos does two things: First, it buys reindeer for Eskimos, and I do not think that it will ever be tested on constitutional grounds; secondly, it places certain restrictions on the sale of those Eskimo-owned reindeer.

We have sufficient history of restrictions placed around the sale of Indian property, I believe, to stop any fears of this being tested on constitutional grounds in that respect. Those are the only two things the bill does. (emphasis added).

Hearing before the Committee on the Territories/House of Representatives, Seventy-fifth Congress, First Session, on Bills Relating to the Territory of Alaska, June 15 and 22, 1937.

From the foregoing exchanges, it is evident that, to the extent that the Congress intended to preclude non-Natives from ever again engaging in the reindeer business Alaska, the means by which Congress intended to achieve such a result was through the control of the public lands. Congress never intended to impose a blanket prohibition on the ownership of reindeer by non-Natives in Alaska. As Mr. Rankin, who is "a better lawyer than some of us," noted, "one cannot say to a man that he may not go into the State of Florida and acquire and hold property." Congress was fully aware of this limitation on Congressional action and never intended to say to Mr. Williams or any other person that he may not go into the State of Alaska and farm, on his own privately owned land, reindeer lawfully purchased outside of Alaska.

A closer examination of each of the excerpts from the legislative history quoted by the IBIA reveals that, while the speakers sometimes described the purpose of the Reindeer Act as to establish and maintain a reindeer industry that is permanently and exclusively Native, the speakers also addressed the means that would be employed toward that purpose. In every case that the legislative history addresses the means to be employed in the Reindeer Act, the means are described as: (1) the purchase by the Government of all nonnative-owned reindeer and equipment; (2) the distribution of the reindeer and equipment among the Natives, and (3) the allocation and management of the reindeer ranges to benefit and support the Native reindeer industry. Nowhere in the legislative history does any person ever say or suggest that

an intended means of accomplishing the purpose of the Reindeer Act is to impose a total ban on the purchase and ownership of reindeer, regardless of their source, by all except Natives in Alaska.

The first statement of legislative history quoted by the IBIA is from the House Report:

At the present time only one solution [to the problems caused by conflicts between Natives and non-Natives] seems practicable and that lies in the purpose of the bill under consideration for the purchase by the Government of all nonnative-owned reindeer and such reindeer range equipment as may be useful and distribution of the same among the natives or the holding of such reindeer and other property by the Government in trust for the use of the natives. With the permanent elimination in this manner of the nonnative owners, the problem will be a comparatively simple one, for then all the deer will be native deer and the deer may be distributed and the ranges allocated in an equitable manner satisfactory to the natives. [Emphasis added by the IBIA.]

23 IBIA 55. Note, the language underlined by the IBIA states, "With the permanent elimination in this manner of the nonnative owners, . . ." Thus, while the House may have sought the permanent elimination of non-Native owners of reindeer in Alaska, the House sought to achieve that purpose only "in this manner," that is, by purchasing all reindeer and equipment and distributing the reindeer to the Natives or holding such reindeer in trust for the Natives. One cannot read the phrase, "in this manner," as referring to a complete ban on non-Native ownership of reindeer, regardless of the source of the deer.

Similar to the House Report is the letter from the Secretary of the Interior recommending that the bill be amended to provide that all of the reindeer in Alaska at that time be purchased by the Government, and not only those that are counted in corrals or chutes. H.R. Rep. No. 1188 at 5. In urging this, the Secretary articulated his view that the purpose of the bill was to assure the reindeer industry "permanently to the natives of Alaska." The Secretary went even further and stated that the purpose would not be achieved unless "all possibility of white

ownership be eliminated." However, the Secretary concluded by describing the means for eliminating the "possibility of white ownership" as the purchase by the Government of "all the deer of a nonnative owner on a given range, and not only those that are run through a corral or chute." The Secretary did not propose that all possibility of non-Native ownership be eliminated by imposing a total ban on the purchase or ownership by non-Natives of reindeer, regardless of their source.

The statements of Delegate Dimond, quoted on page 65 of the IBIA's opinion, are of the same nature. Mr. Dimond stated that, "The purpose of the bill is to purchase all of the reindeer of Alaska, . . . and that thereafter the reindeer in Alaska shall be reserved as to ownership and grazing for natives alone, so that all others than natives will be excluded from the reindeer business or industry." 81 Cong. Rec. 9471. Note, that Mr. Dimond speaks very specifically to "the reindeer of Alaska" and the "the reindeer in Alaska." The means described by Delegate Dimond are, in fact, exactly those that are employed by the Reindeer Act (to purchase all the reindeer then in Alaska, to prohibit any but Natives in Alaska from owning those reindeer and their increase, and to reserve the grazing areas on the federal lands for the exclusive use of Natives). In short, the legislative history does not contravene, but rather supports the interpretation of the Reindeer Act as not imposing a total ban on the ownership of reindeer by non-Natives in Alaska.

It is true that Congress expressed the hope that by employing the means described in the preceding paragraphs the reindeer industry in Alaska would be permanently assured to Natives:

If we pass this bill, the result we hope will be, and I think it will be, that as the white Alaskan reindeer owner vanishes from Alaska the native owner and the

native Eskimo will be enabled to survive without the Federal Government having to contribute to his existence.

Remarks of Rep. Green, 81 Cong. Reg. 9480. However, the expression of a hoped for, or even intended consequences or results of legislation is not the same as a mandate to accomplish those results or consequences by any conceivable means. For example, Congress may have as its avowed purpose in passing certain legislation the eradication of poverty in America. However, if the legislation provides for a food stamp and other similar program, it would be wrong to interpret the legislation as, for example, also making it illegal for landlords to charge or collect rent from people below the poverty line, even though it is undeniable that making it illegal to charge or collect rent from poor people would be consistent with and may even further the purpose of eradicating poverty in America.

The IBIA quotes Senator Thomas of Oklahoma, the sponsor of the bill in the Senate:

The pending bill has for its purpose the taking of title to reindeer in northern Alaska and holding title in the Government for the benefit of the Eskimos. . . . It provides further for the operation of the reindeer industry as a governmental institution for the benefit of the Eskimos.

81 Cong. Rec. 4278. Here, Senator Thomas describes the employment of certain means as being the purpose of the Reindeer Act. The means that Senator Thomas describes is the taking of title to the reindeer in Northern Alaska and holding title for the benefit of the Eskimos. Senator Thomas does not state that the purpose of the Reindeer Act is to prohibit non-Natives in Alaska from ever purchasing reindeer outside of Alaska and importing them to Alaska. Therefore, this piece of legislative history, like the others, supports the interpretation of the

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Reindeer Act as not imposing a total ban on non-Native ownership of reindeer, rather than the opposite interpretation urged by the IBIA.⁶

Finally, the IBIA refers to an excerpt of the Senate Report, which states, in part, that the "rehabilitation of the Eskimo started in 1892 can be safeguarded and continued only if complete ownership of deer and control of the range is again established in the natives or in the Government on behalf of the natives." Senate Report No. 474, p. 3, 75th Cong., 1st Sess. (1937). Here, the Senate Report refers to both the purpose (or a purpose) of the Reindeer Act and the means employed. The purpose is stated to be the rehabilitation of the Eskimo. The means are stated to be the acquisition of all reindeer and the control of the range. Prohibition on the importation by non-Natives of non-Alaska deer is not among the means mentioned.

The IBIA's response to the Area Director's argument, that the legislative history supports his interpretation of the Reindeer Act, is woefully inadequate. The Area Director noted that even Delegate Dimond, when he spoke of "forever forbidding white men from going into the [reindeer] business," made it clear that there were certain specific means to be employed toward that purpose, among which was control of the reindeer ranges:

[I]t is necessary to purchase these deer as are owned by the white men and distribute them among the natives and forever forbid, through the control of the range, white men from going into the business so that we will never have to go back and do this job all over again.

⁶ It is notable that in Senator Thomas' mind, the bill only provided for the purchase of reindeer in "northern Alaska." If we were to adopt Senator Thomas' statement of the purpose of the Reindeer Act, that act would have no application to the plaintiffs in this case, because their reindeer are not located in "northern Alaska." Of course, the Reindeer Act is not restricted to the reindeer in northern Alaska, which illustrates the limitations and pitfalls involved in placing blind reliance upon the statements of legislators to interpret and construe their legislation.

81 Cong. Rec. 9472. Significantly, Mr. Dimond does not include a total ban on the purchase of non-Alaska reindeer by non-Natives in his description of the means for accomplishing the permanent exclusion of whites from the reindeer industry.

The IBIA's response to the Area Director was to focus solely on Mr. Dimond's range management comment, to the exclusion of the comment about purchasing the non-Native owned reindeer. The IBIA then concluded (1) that the chief concern addressed by the range management provisions of the Act was the need to prevent over-grazing; and (2) that, in any event, Congress did not consider range management alone to solve the problem. 23 IBIA 60. However, the IBIA missed the Area Director's point. The Area Director's argument was that the legislative history reveals that Congress intended the Reindeer Act to employ certain means for accomplishing the purposes stated in § 500 and to exclude other means. Among the means that Congress included were the range management provisions and among the means that Congress did not include was a total ban on non-Native purchase or ownership of foreign reindeer. On the other hand, for the IBIA to observe that the range management provisions served more than one purpose and that range management was not the only means employed toward the purpose of establishing a Native reindeer industry, takes nothing away from the Area Director's argument.

- c. The Area Director's interpretation, that the Reindeer Act does not prohibit the importation of foreign deer by non-Natives, is not in conflict with the Department of Interior's initial or any previous position.

The IBIA asserts that the Department of Interior initially interpreted the Act as authorizing and requiring the Department to eliminate all non-Native ownership of reindeer. In support of this conclusion, the IBIA cites, among other facts, the fact that the Secretary of the Interior

proceeded as soon as possible to acquire all non-Native-owned reindeer. However, the IBIA fails to point to a shred of evidence that the Department of the Interior, either initially or at any time, interpreted the Reindeer Act as prohibiting non-Natives in Alaska from importing non-Alaska reindeer. The fact that the Secretary of the Interior proceeded to use the Congressional appropriations to purchase all reindeer in Alaska owned by caucasians, cannot be construed as evidence that the Secretary interpreted the Act as prohibiting the importation of non-Alaska reindeer.

Moreover, when first faced with the issue, the Department of the Interior, acting through the Juneau Area Director, interpreted the Reindeer Act as not prohibiting the importation by non-Natives of non-Alaska reindeer. Accordingly, the case of *Udall v. Tallman*, 380 U.S. 1, 16, 85 S.Ct. 792, 13 L.Ed.2d 616 (1965) argues against, rather than in favor of the IBIA's decision:

When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. . . . Particularly is this respect due when the administrative practice at stake involves a contemporaneous construction of a statute by the men charged with responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.

In this case, surely the administrator of the Bureau of Indian Affairs for Alaska, who is charged with the responsibility of "making the parts [of the Reindeer Act] work efficiently and smoothly," and who is otherwise in charge of the day-to-day administration of the Act, is entitled to be shown greater deference with regard to the interpretation of the Reindeer Act than the IBIA, which sits in Washington, D.C. Moreover, because the Area Director's interpretation of the Reindeer Act arose at the time that the issue of the importation of non-Alaska reindeer by a non-Native first arose, the Area Director's interpretation is a "contemporaneous construction" that

carries persuasive weight. *Watt v. Alaska*, 451 U.S. 259, 272-73, 101 S.Ct. 1673, 68 L.Ed.2d 80 (1981).

- d. Even if one could conclude that a prohibition on the purchase of foreign deer by non-Natives in Alaska was a possible interpretation of the Reindeer Act, that interpretation should not be adopted because the IBIA made no findings of fact that the opposite interpretation would thwart the purpose of the Reindeer Act.

As noted above, the stated purpose of the Reindeer Act, set forth in § 500, is "to establish and acquire for the said natives of Alaska a self-sustaining economy by acquiring and maintaining for and on behalf of said natives a reindeer industry or business." In order to ignore the plain meaning of the Reindeer Act, which the IBIA acknowledges does not prohibit non-Natives from importing foreign reindeer, the IBIA must make findings of fact that the "literal application of a statute will produce a result demonstrably at odds with the intention of its drafters"⁷ or that the literal interpretation "thwarts the purpose of the overall statutory scheme or leads to an absurd result."⁸ However, the IBIA does nothing more than state, in conclusory fashion, that a literal interpretation of the Reindeer Act "conflicts with the intention of its drafters and thwarts the purpose of the overall statutory scheme." 23 IBIA 68.

The IBIA's lack of factual findings on this point is particularly egregious given the statements made by the Regional Solicitor to the Juneau Area Director that "[t]he stated purposes of establishing and maintaining a self-sustaining economy and preserving the Native character of the reindeer industry have not been seriously threatened thus far by the allowance

⁷ *States v. Ron Pair Enterprises, Inc.*, *supra*, at 242.

⁸ *Trailer Train Co. v. State Board of Equalization*, 697 F.2d 860, 866 (9th Cir. 1983), *cert. den.* 464 U.S. 846, 104 S.Ct. 149, 78 L.Ed.2d 139 (1983).

of non-Native importation of non-Alaskan reindeer." Administrative Record p. 110. The presence in the record of such a statement by the government agency charged with administering the Reindeer Act, and the absence of any factual evidence to the contrary, create an even greater burden on the IBIA to justify and support its finding that the importation to Alaska of reindeer by non-Natives would "thwart the purpose of the overall statutory scheme."

According to information supplied by the Alaska Department of Natural Resources, which was published in the Anchorage Daily News, federal land comprises fifty-nine percent (59%) and Native land comprises twelve percent (12%) of all lands in Alaska. On the other hand, privately owned land accounts for only one percent (1%) of the lands in Alaska. See, Exhibit A, annexed hereto. Under the Area Director's interpretation of the Reindeer Act, which was rejected by the IBIA, reindeer herding, grazing and other activities by non-Natives would be prohibited on seventy-one percent (71%) of the land mass in Alaska. Given this, it is nothing short of capricious for the IBIA to conclude that permitting non-Natives to engage in reindeer farming with only imported reindeer on lands one-seventieth the size of the lands potentially available to the Natives would thwart the Act's purpose "to establish and acquire for the said natives of Alaska a self-sustaining economy by acquiring and maintaining for and on behalf of said natives a reindeer industry or business."

5. No basis exists for concluding that Congress reserved the entire reindeer industry to the Natives.
 - a. The Reindeer Act cannot be interpreted as creating a reservation for Natives in Alaska.

Applying the analysis in *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 39 S.Ct. 40, 63 L.Ed. 138 (1918) and *Winters v. United States*, 207 U.S. 564, 28 S.Ct. 207, 52 L.Ed. 340

(1908) led the IBIA to state, "it appears that Congress should be deemed to have reserved the entire reindeer industry to the Natives -- in other words, to have precluded non-Natives from engaging in the industry." 23 IBIA 65-66. However, neither *Alaska Pacific* nor *Winters* has any application to this case.

Alaska Pacific and *Winters* involved an interpretation of an agreement (in the case of *Winters*) and an act of Congress (in the case of *Alaska Pacific*) that created a reservation for a certain tribe of native peoples. In *Alaska Pacific*, the question addressed by the Supreme Court was one of interpretation of specific words:

The question is one of construction--of determining what Congress intended by the words 'the body of lands known as Annette Islands.'

248 U.S. at 87. Similarly, in *Winters* the question addressed by the Supreme Court was whether, in an agreement by the Crow and other tribes to cede back to the United States a large tract of land while retaining a much smaller tract of land known as the Fort Belknap Reservation, the agreement should be interpreted so as to reserve to the tribes sufficient water rights to irrigate their retained lands. In *Alaska Pacific* the Court determined that Congress intended the words "the body of lands known as Annette Islands" to mean not only the uplands but the submerged lands and the waters surrounding the islands as well. In *Winters*, the Court ruled that an intention by the tribes to retain sufficient water rights for their retained lands could be implied from the grant by the Crow and the other tribes of the lands surrounding the retained parcels and containing the watersheds for the retained parcels. 207 U.S. at 576.

In both *Alaska Pacific* and *Winters*, the Supreme Court started with the language of the statute or the agreement, then determined what interpretations or implications it was possible to make or draw from the language of the agreement, and then turned to the legislative history.

the events preceding the agreement or the statute, and the particular attending circumstances to decide which of the possible interpretations or implications should be adopted. By contrast, the IBIA skipped the first step of this analysis. Rather than examining the language of the Reindeer Act and identifying the possible interpretations of the statutory language, the IBIA ignored the Act's plain language and proceeded instead to a discussion of the purpose and intent of Congress in adopting the Act.⁹

For the reasons just described, the IBIA's citation to *County of Yakima v. Confederated Bands & Tribes of the Yakima Indian Nation*, 502 U.S. 251, 112 S.Ct. 683, 116 L.Ed.2d 567 (1992) is also inapposite. The principle that statutes are to be liberally construed in favor of the Indians only comes into play "when we are faced with these two possible constructions" or "with ambiguous provisions." 112 S.Ct. at 693. Here, two constructions of the Reindeer Act are not possible, and none of its provisions are ambiguous. Liberal construction does not mean making up provisions out of whole cloth and inserting them into the legislation. Legislating is the job of Congress, not the IBIA.¹⁰

⁹ While it is possible to interpret the words, "the body of lands known as Annette Islands," to mean also the submerged lands and waters around and between the islands, and while it is possible to infer that a grant of a part of one's lands includes an implied reservation of sufficient water rights to render the retained lands arable, it is not possible to interpret the language of § 500i of the Reindeer Act, which states that it is crime for a non-Native to purchase reindeer in Alaska from the United States or from Natives, to mean that it is also a crime for a non-Native to purchase reindeer in Canada and bring them to Alaska. Understandably, the IBIA did not even attempt such an interpretative feat.

¹⁰ Even if there were an ambiguous provision in the Reindeer Act that could be construed as a prohibition on the importation of reindeer by non-Natives, there is nothing in the record to support the conclusion that such an interpretation of the Reindeer Act would benefit the Natives in Alaska. The IBIA assumes, without any support in the record, that interpreting the Reindeer Act to prohibit non-Natives from importing reindeer to Alaska would benefit the Natives in Alaska.

- b. Even if Congress had intended to reserve the reindeer industry in Alaska for non-Natives, Congress lacked the power to do so.

There is another more important reason why *Alaska Pacific* and *Winters* have no application to this case. The IBIA argues that the Reindeer Act is an act that created a "reservation" for the Natives, similar to the statute in *Alaska Pacific* which created the Metlakatla Reservation and the agreement in *Winters* which resulted in the creation of the Fort Belknap Reservation. According to the IBIA, the "reservation" created by the Reindeer Act is the "reindeer industry in Alaska." However, a distinction exists between the reservations in *Alaska Pacific* and *Winters* and the reindeer industry "reservation" that is fatal to the IBIA's analysis.

In both *Alaska Pacific* and *Winters*, the grantor of the reservation owned and controlled the property rights granted in the reservation. For example, in *Alaska Pacific*, the Court noted:

There seems to be no doubt that an interpretation which would allow non-Natives to re-enter the reindeer industry in Alaska would impair or defeat the purpose of the Reindeer Act.

23 IBIA 66. However, the IBIA must base conclusions such as this, not on assumptions, but on factual findings that are supported by the record. Here, there is no support in the record for a finding that re-entry by non-Natives in the reindeer industry in Alaska would harm Natives. To the contrary, the historical information suggests that the opposite is true.

According to Stern, *et al.*, *Eskimos, Reindeer and Land*, 102-103, the total number of reindeer in 1937 was 594,000. In its report on the Act, the House of Representatives stated that in 1937, approximately one-third of all of the reindeer in Alaska were owned by Natives. H.R. Rep. 75-1188, 75th Cong., 1st Sess., at 2-3 (1937). Therefore, in 1937, the Natives owned approximately 181,000 reindeer. As Stern, *et al.*, reports, the total number of reindeer in Alaska, all of which were by operation of the Reindeer Act either Native-owned or owned in trust for the Natives, fell within two years of the passage of the Reindeer Act to below 181,000, and in the forty-five years thereafter the number never exceeded 50,000. In short, almost immediately following passage of the Reindeer Act, the reindeer industry in Alaska became just a ghost of its former self. The historical data simply does not support a finding that re-entry by non-Natives in the reindeer industry would harm the Natives.

That Congress had [the] power to make the reservation inclusive of the adjacent waters and submerged land as well as the upland needs little more than statement. All were the property of the United States and within a district where the entire dominion and sovereignty rested in the United States and over which Congress had complete legislative authority. *National Bank v. County of Yankton*, 101 U. S. 129, 133, 25 L. Ed. 1046; *Shively v. Bowlby*, 152 U. S. 1, 47-48, 58, 14 Sup. Ct. 548, 38 L. Ed. 331; *United States v. Winans*, 198 U. S. 371, 383, 25 Sup. Ct. 662, 49 L. Ed. 1089.

248 U.S. 87-88. Similarly, in *Winters*, the Court noted that the Crow and other tribes owned, at the time they granted to the government the lands surrounding the reclaimed Fort Belknap Reservation lands, owned all of the water rights that were the subject of the dispute.

In the case at bar, however, neither Congress nor the natives in Alaska ever owned or had title to the "reindeer industry in Alaska." The IBIA implicitly recognized this fact, on page 62 of its opinion, when it noted that "in a broad sense, appellant views Congress as having purchased a 'reservation' for Alaska Natives, consisting of the reindeer industry in Alaska." In other words, whatever property rights in the reindeer industry that Congress may have included in the "reservation" created for Natives in Alaska, Congress had to purchase from someone. Thus, Congress could include in such a reservation no more than the property rights in the reindeer industry that Congress purchased. While there is no doubt that Congress purchased all of the reindeer, as well as all of the reindeer-related corrals, chutes, and equipment, that were extant in Alaska in the late 1930's, Congress did not purchase, and could not purchase, the right to exclude Mr. Williams or other non-Natives in Alaska from engaging in the business of farming reindeer.

Tellingly, the IBIA never asserts that Congress possesses the inherent power to exclude some but not all from engaging in the reindeer business. This is undoubtedly because the

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power to exclude persons from engaging in a lawful business activity is not a power granted to Congress or to any State.

In *Truax v. Raich* 239 U.S. 33, 36 S.Ct. 7, 60 L.Ed.131 (1915), the Supreme Court struck down an Arizona law which prohibited employers from employing non-Native born citizens for more than 20% of their work force.

"It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure... If this could be refused solely upon the grounds of race or nationality, the prohibition or the denial to any person of the equal protection of the laws would be a barren form of words.

Id. at 41.

In *New State Ice Co. v. Liebman*, 285 U.S. 262, 52 S.Ct. 371, 76 L.Ed. 747 (1932), the Supreme Court reviewed a statute which prohibited the manufacture and sale of ice where existing ice manufacturers were "sufficient to meet the public needs" for ice. *Id.* at 272. While recognizing that all businesses are subject to regulation (*id.* at 273) and that industries affecting the public interest are subject to even more regulation (*id.* at 274-77), the Supreme Court held that an outright ban of new competitors in a business endeavor violates due process:

Plainly, a regulation which has the effect of denying or unreasonably curtailing the common right to engage in a lawful private business, such as that under review, cannot be upheld consistently with the Fourteenth Amendment.

Id. at 278.

Similar to the case at hand, the Court in *New State Ice* recognized the purpose of the ban on competitors in the ice industry.

Stated succinctly, a private corporation here seeks to prevent a competitor from entering the business of making and selling ice. It claims to be endowed with state authority to achieve this exclusion. There is no question now before us of

any regulation by the state to protect the consuming public either with respect to conditions of manufacture and distribution or to insure purity of product or to prevent extortion. The control here asserted does not protect against monopoly, but tends to foster it. The aim is not to encourage business, but to preclude persons from engaging in it.

Id. at 278-79. The court concluded: "The opportunity to apply one's labor and skill in an ordinary occupation with proper regard for all reasonable regulations is no less entitled to protection [than freedom of the press]." *Id.* at 279.

While the *Truax* and *New State Ice* decisions may be viewed as old, the principles within them are not without more recent support. The Supreme Court in *Hampton v. Mow Sun Wong*, 426 U.S. 88, 96 S.Ct. 1895, 48 L.Ed.2d 495 (1976), struck down a federal ban on the employment of non-citizens in federal competitive civil service. *Id.* at 102 (citing *Truax* with approval). Of particular significance to this case was the rejection of the argument in *Hampton* that the "federal power over aliens is ... plenary." *Id.* at 101. While the federal power over aliens is plenary, the federal prohibition of aliens in federal civil service was still subject to review under the Due Process Clause.

In *United States v. Tropiano*, 418 F.2d 1069 (2nd Cir. 1969), cert. denied 397 S.S. 1021, 90 S.Ct. 1255, 25 L.Ed.2d 530 (1970), garbage collectors were charged with extortion in violation of the Hobbs Act when they tried to remove competition in the business. The defendants argued that no extortion occurred because the victims did not relinquish any property, but merely the "right to do business." *Id.* at 1075. The Court rejected the argument, holding that property "includes in a broad sense, any valuable right considered as a source or element of wealth." *Id.* "The right to pursue a lawful business including the solicitation of customers necessary to the conduct of such business has long been recognized as a property

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right within the protection of the Fifth and Fourteenth Amendments of the Constitution." *Id.* at 1076 (citing *Louis K. Liggett Co. v. Baldridge*, 278 U.S. 105, 49 S.Ct. 57, 73 L.Ed.204 (1928)) overruled in *North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc.*, 414 U.S. 155, 945 S.Ct. 407, 38 L.Ed.2d 379 (1973). In a more recent case, the Ninth Circuit referred to the ability to pursue one's livelihood as a liberty, as opposed to property, interest protected by the Fifth and Fourteenth Amendments. "[I]nterference with an individual's pursuit of his chosen livelihood may amount to a deprivation of a constitutionally protected liberty interest in employment." *Pelletier v. Federal Home Loan Bank of San Francisco*, 968 F.2d 665 (9th Cir. 1992).

In summary, Congress does not possess the inherent power to exclude persons, even persons who are not United States citizens, from engaging, in a lawful manner, in an otherwise lawful business. As Congress does not possess such a power, and did not purchase such a right pursuant to the provisions of the Reindeer Act, it follows that Congress could not, as the IBIA held, "be deemed to have reserved the entire reindeer industry to the Nations." 23 IBIA 65.

6. The IBIA's Interpretation of the Reindeer Industry Act Violates the Equal Protection Component of the Due Process Clause of the Fifth Amendment

Statutes should be interpreted if at all possible so as to avoid a finding that the statute is unconstitutional. *Hammond v. Hoffbeck*, 627 P.2d 1052 (Alaska 1981). While the Fifth Amendment does not explicitly state that it protects citizens from violation of equal protection of the laws by the federal government, the due process clause has been interpreted to include an equal protection component. See generally, *Fullilove v. Klutznick*, 448 U.S. 448, 100 S.Ct. 2758, 65 L.Ed.2d 902 (1980). In evaluating equal protection claims, the Supreme Court has

steadfastly required courts to use strict scrutiny when the government's treatment of people is based on race, as it is in this case.

Absent searching judicial inquiry into the justification for such race-based measures, there is simply no way of determining what classifications are "benign" or "remedial" and what classifications are in fact motivated by illegitimate notions of racial inferiority or simple racial politics. Indeed, the purpose of strict scrutiny is to "smoke out" illegitimate uses of race by assuring that the legislative body is pursuing a goal important enough to warrant use of a highly suspect tool. The test also ensures that the means chosen "fit" this compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, ___ 109 S.Ct. 706, 102 L.Ed.2d 854 (1989) (plurality opinion of O'Connor, J.). In the present case, this Court is obliged to review with the strictest scrutiny, not merely a preference, but the guarantee of an absolute monopoly to members of a particular racial group.

The Court in *Croson* also emphasized that it makes no difference which race is being affected. "[T]he standard of review under the Equal Protection Clause is not dependent on the race of those burdened or benefited by a particular classification." *Id.* (citing *Wygant v. Jackson Board of Education*, 476 U.S. 257, 279-80, 285-86, 106 S.Ct. 1842, 90 L.Ed.2d 250 (1986) (O'Connor, J., concurring)). The Court confirmed that "' [t]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color.'" *Croson*, 102 L.Ed.2d at 882 (quoting *Regents of the University of California v. Bakke*, 438 U.S. 265, 289-90, 98 S.Ct. 2733, 57 L.Ed.2d 750 (1978)).

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The Supreme Court in *Croson* also made clear that the only justification for classifications based on race is to remedy the present effects of past discrimination through the government's granting of a preference to a particular race, and reviewable findings must be made to support such a determination. *Croson*, 102 L. Ed. 2d at 88-1 (opinion of O'Connor, J.) Here, however, the government has made no findings that the granting of a monopoly in the reindeer business to Alaskan natives is necessary to combat the effects of past discrimination.

The government may argue that *Croson* does not apply here. *Croson* involved a review of the power of a municipality to redress racial discrimination rather than the plenary power of the federal government reviewed in *Fullilove v. Klutznick*, supra, 446 U.S. 448 (1980). The Supreme Court in *Fullilove* found that a waiver from the otherwise strict racial preference was essential for the program to be narrowly tailored and otherwise "pass muster." *Fullilove*, 448 U.S. at 487. Here, however, the racial monopoly as interpreted by the IBLA is absolute, with no flexibility or provision for waivers.

The requirement that plaintiffs get out of the reindeer business is tantamount to the racial preference in *Wygant*, where the Court held that laying off more senior white teachers to preserve racial balances in the work force was too drastic a remedy, regardless of whether a race-based remedy was truly warranted in the case. Even if there could be some legitimate basis for giving an economic benefit to native Alaskans as a racial group, the complete exclusion or expulsion of non-natives from the business is simply too drastic to comport with the Constitution.

The IBIA purports to base this federally imposed racial monopoly on grounds entirely different from the limited remedy for past wrongs approved in *Croson* and all the prior affirmative action cases: the power of Congress to regulate commerce with the Indians.

First, the Supreme Court has clearly held that Congressional power to regulate commerce with the Indians is not immune from scrutiny under the equal protection guarantee in the Fifth Amendment. In *Delaware Tribal Business Committee v. Weeks*, 430 U.S. 73, 97 S.Ct. 911, 51 L.Ed.2d 173 (1977), Kansas Delawares were excluded from a federal payment to the Cherokee and Absentee Delawares. The Kansas Delawares sued on equal protection grounds. The Court reaffirmed that even in Indian affairs the federal government is subject to the equal protection requirements of the Fifth Amendment.

Appellant Secretary of the Interior, on the other hand, submits that the plenary power of Congress in matters of Indian affairs "does not mean that all federal legislation concerning Indians is . . . immune from judicial scrutiny or that claims such as those presented by [appellants], are not justiciable." . . . We agree with the Secretary of the Interior.

Id. at 83-84 (citation to brief omitted). Since the equal protection requirement applies even when legislation favoring "Indians" is involved, the ultimate question is whether equal protection is violated in the case at hand. In *Morton v. Mancari*, 417 U.S. 535, 94 S.Ct. 2474, 41 L.Ed.2d 280 (1974), cited in *Weeks*, 430 U.S. at 84, the Court reviewed the Indian Reorganization Act of 1934, 25 U.S.C. § 461, which gave preferences to qualified Indians in employment in the Bureau of Indian Affairs. Non-Indians challenged the preference on equal protection grounds and sought review under strict scrutiny as a race-based employment practice. The Court noted:

The purpose of these [historical] preferences, as variously expressed in the legislative history, has been to give Indians a greater participation in their own self-government, to further the Government's trust obligation toward the Indian

tribes, and to reduce the negative impact of having non-Indians administer matters that affect Indian tribal life.

Id. at 541-42 (footnotes omitted) These purposes are not present in the case of Alaska natives and the reindeer monopoly. The plaintiffs, if allowed to carry on their business, would have no impact on the tribal life of Alaska natives or on matters involving Alaskan natives "self-government."

The Court in *Mancari* explained that the employment preference was unique

Resolution of the instant issue turns on the unique legal status of Indian tribes under federal law and upon the plenary power of Congress, based on a history of treaties and the assumption of a "guardian-ward" status, to legislate on behalf of federally recognized Indian tribes.

Id. at 552. Alaskan natives are not the same as federally recognized Indian tribes

Moreover, the Court found the employment preference in *Mancari* easy to uphold because it was "not even a racial preference." The preference is similar in kind to the constitutional requirement that a United States Senator, when elected, be "an Inhabitant of that State for which he shall be chosen." *Id.* at 554 (quoting U.S. Constitution, Art. I, § 3, cl. 3) (footnote omitted) Since the preference applies to federally recognized tribes, "[i]n this sense, the preference is political rather than racial in nature." *Id.* at 554 n.24. It was on this basis that the Court distinguished the situation in *Mancari* from the racial preference in *Regents of the University of California v. Bakke*, 438 U.S. 265, 304 n.42, 98 S.Ct. 2733, 57 L.Ed.2d 759 (1978). Like *Bakke*, the present case is distinguishable from *Mancari*, and an opposite result should obtain.

One lower court was faced with an equal protection challenge to legislation creating an economic preference for Indians in *Livingston v. Ewing*, 455 F. Supp. 825 (D.N.M. 1978).

affirmed 601 F.2d 1110 (10th Cir. 1979), cert. denied 444 U.S. 870, 100 S.Ct. 147, 62 L.Ed.2d 95 (1979). Only Indians were allowed to sell handmade crafts at a museum. Non-Indians challenged the policy on equal protection grounds. The court upheld the policy on the ground that the distinction was cultural, rather than racial. *Id.* at 830. However, the reindeer monopoly in the present case is purely racial, not cultural or political. It does not apply to persons having some recognized sovereign status such as federally recognized Indian tribes. It certainly has nothing to do with self-government.

The IBIA cited *United States v. Clark*, 912 F.2d 1087 (9th Cir. 1990) cert. denied 498 U.S. 1037, 111 S.Ct. 705, 112 L.Ed.2d 695 (1991), involving a prohibition of the taking of marine animals under the Marine Mammal Protection Act, with an exclusion for takings by native Alaskans for subsistence purposes. However, there was no equal protection challenge raised in *Clark*. The purpose of the statute at issue there was to protect certain species from extinction. Only because the taking of certain marine mammals was necessary for survival of their culture were Alaskan natives excluded from the coverage of the act. That is not true in the present case. There is no evidence that the Reindeer Industry Act was designed to protect reindeer from extinction. The purpose as recognized by the IBIA is to give one race of people a monopoly in an area of commerce. Moreover, the IBIA's interpretation is not necessary to restore some historical or cultural tradition. Native Alaskans never had any monopoly over the propagation of Canadian reindeer--the only reindeer plaintiffs have owned.

In summary, the IBIA's interpretation of the Reindeer Industry Act gives an absolute monopoly in a business endeavor to one racial group. It would be the same as if Congress declared that only native Alaskans could be lawyers or only whites could be teachers or only

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blacks could be doctors. Such racial distinctions are abhorrent to the Constitution, reminiscent of the exclusion of people of Chinese descent from San Francisco's private laundry industry in *Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886), limited *U.S. v. Verdugo-Urquidez*, 494 U.S. 259, 110 S.Ct. 1056, 108 L.3d 2d 222 (1990). The Congressional authority to regulate in Indian affairs as in a guardian-ward relationship has no applicability in the present discrimination against plaintiff as a non-native Alaskan.

7. The IBIA's Interpretation of the Reindeer Act Deprives the Plaintiffs of Their Rights under the Privileges and Immunities Clause of Article IV, § 2

The Privileges and Immunities Clause provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Constitution, Art. IV § 2. While this provision has always been applied against states discriminating against citizens of other states, there is nothing in the language of this provision to indicate that it does not restrict the federal government. The reason it has never been applied to the federal government is that it is extremely rare for the federal government to dictate that people of one state cannot engage in a business which they are free to engage in as citizens of any other state. While it is rare, it is exactly what the IBIA determined that Congress intended to do with the Reindeer Industry Act--prohibit nonnatives from engaging in the reindeer business in Alaska even though they could raise reindeer in any other state.

The purpose of the Privileges and Immunities clause is to ensure that "the people of each state shall . . . enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof." *Slaughter-House Cases*, 83 U.S. (15 Wall.) 36, 21 L.Ed 394 (1872). While the scope of the Privileges and Immunities Clause has

changed since the *Slaughter-House Cases* in the 1870's, occupations are still clearly privileges of trade and commerce. *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 105 S.Ct. 1272, 84 L.Ed 2d 204 (1985). The right to hold personal and real property is also such a privilege. *Ward v. Maryland*, 79 U.S. (12 Wall.) 418, 20 L.Ed. 449 (1870). The Privileges and Immunities Clause also protects the plying of one's trade. *Doe v. Bolton*, 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed 2d 201 (1973).

The modern articulation of the test can be seen in *Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 108 S.Ct. 2250, 101 L.Ed 2d 56 (1988). First, the activity must be one of the privileges of citizenship. *Id.* at 65. Second, the regulation is invalid only if it is not closely related to the advancement of a substantial governmental interest. *Id.*

As the cases above demonstrate, owning personal property such as reindeer and engaging in the reindeer business is a privilege of citizenship. Thus, the first element of the two part test is satisfied. In addition, the Reindeer Industry Act as interpreted by the IBIA does not closely advance a substantial federal interest. Instead, it advances an illegitimate interest--to grant monopolies in commerce on the basis of race. This interest is unrelated to preservation of the historical or subsistence needs of Alaska natives. By definition, native Alaskans did not have a monopoly over non-native reindeer. It is only such non-native reindeer that are involved in plaintiffs' business. No legitimate interest exists for depriving Plaintiffs of the right to continue that business.

8. **The IBIA's Interpretation of the Reindeer Industry Act Violates Plaintiffs' Fundamental Rights to Travel and Resettlement**

The IBIA's decision that the Reindeer Act absolutely prohibits the plaintiffs from engaging in the reindeer business in Alaska violates the plaintiffs' due process rights to travel and

resettlement. The Reindeer Act only applies to the reindeer industry in Alaska. Under the IBIA's decision, plaintiffs can engage in their business in any state in the country, except Alaska. This decision requires plaintiffs to either abandon their business or move and reestablish their livelihood in another state.

The leading case on the right to travel and resettle in the state of one's own choosing is *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed. 600 (1969). The Court invalidated a state law which imposed a one year waiting period before newcomers to the state would be eligible for welfare benefits. The purpose of the statute was to save the state money by avoiding the influx of poor people into the state. The waiting period certainly achieved that purpose. "But the purpose of inhibiting migration by needy persons into the State is constitutionally impermissible." *Id.* at 629.

The Court held that the statute impacted the right "to migrate, resettle, find a new job, and start a new life" in the state of one's choice. *Id.* at 629. Such an impact required that the law be justified by a compelling governmental interest. *Id.* at 639.

The ruling in *Shapiro* was explained in *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974). The Court held that, to affect the fundamental right of travel and resettlement, the law must deter migration and impose a penalty on migration. *Id.* at 257. Moreover, the Court recognized the right is more than a right to movement, but a right to locate and establish life in the state of one's choice. *Id.* at 255.

Shapiro and Dunn (v. Blums'ain, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972)) stand for the proposition that a classification which "operates to penalize those persons... who have exercised their constitutional right of interstate migration," must be justified by a compelling state interest.

Id. at 258 (emphasis by Court in *Memorial Hospital*) (quoting *Oregon v. Mitchell*, 400 U.S. 112, 238, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970) (separate opinion of Brennan, White, and Marshall, J.J.), rehearing denied 401 U.S. 903, 91 S.Ct. 862, 27 L.Ed.2d 802 (1971); recognized as superseded by constitutional amendment 492 F.2d 587 (D.C. Cir. 1974). The denial of welfare in *Shapiro*, the denial of medical care in *Memorial Hospital*, and the denial of the right to vote in *Dunn* were all penalties on migration.

The denial of the right to practice one's commercial livelihood of raising reindeer is a similar penalty on all who wish to settle in Alaska. This is not a ban on a business because it is dangerous or has public health concerns. If raising reindeer was a nuisance, it would be banned in all 50 states and no one would be allowed to engage in it. This is a case where the federal government has prohibited the reindeer business only in Alaska and only for people of a certain race. Plaintiffs are forced to uproot their lives and relocate to another state if they are to continue their livelihood. This is the antithesis of the right to freedom of resettlement confirmed in the cases cited above.

To force people to move out of state to practice their profession is a drastic step and can be justified under the Due Process Clause only by a compelling governmental interest. The United States can show no interest which is so compelling that it requires people to leave the state. If the IBIA's decision is upheld, Congress or the state could ban non-native Alaskans from engaging in any other profession. Such a result violates the right to earn a living in the occupation of one's choice in the state of one's choice.

IV. THE PLAINTIFFS ARE ENTITLED TO A DECLARATION THAT THEY ARE NOT PRECLUDED FROM FARMING REINDEER IN ALASKA WITH REINDEER IMPORTED FROM OUTSIDE OF ALASKA.

As demonstrated above, the IBIA erred as a matter of law in holding that the Reindeer Act prohibits the plaintiffs from engaging in commercial activities with reindeer imported from outside of Alaska. Since under the standard of review applicable to questions of law, this court must substitute its judgment for that of the IBIA, the plaintiffs are entitled to summary judgment declaring their right to engage in the reindeer industry with imported reindeer.

V. THE REINDEER ACT IS INVALID FOR THE REASON THAT IT VIOLATES THE UNITED STATES CONSTITUTION

A discussion of the application of the IBIA's interpretation of the Reindeer Act to the Right to Property Clause of the Fifth Amendment, the Equal Protection Component of the Due Process Clause of the Fifth Amendment, the Privileges and Immunities Clause of Article IV, § 2, and to the Fundamental Right to Travel and Resettlement are set out in §§ III. B. 4, 5, 6, and 7, above. That discussion is incorporated here. As that discussion demonstrates, the provisions of the Reindeer Act (even ignoring the IBIA's interpretation of that Act), violates the afore-mentioned provisions of the United States Constitution. To prohibit persons from purchasing reindeer in Alaska from Natives or the Government solely on the bases of their race or place of residence is just as much a violation of a person's liberty, property, equal protection, travel, and equal privileges and immunities rights as to prohibit persons, on the basis of their race or place of residence, from engaging in the reindeer industry in Alaska with imported deer. Similarly, to grant to Natives but not to non-Natives reindeer grazing permits on public lands is a violation of these same provisions of the U.S. constitution.

A fundamental obligation of the Courts is to safeguard the legislative infringements of the constitutional rights of all persons. Here, the infringement resulting from the Reindeer Act

on the constitutional rights of the plaintiffs and others was amply demonstrated above. Accordingly, this Court should declare the Reindeer Act to be invalid.

VI. THE IBIA ERRED IN RULING THAT THE REINDEER ACT WAS NOT REPEALED, AT LEAST IN PART, BY THE ALASKA STATEHOOD ACT AND THE ALASKA OMNIBUS ACT

Congress enacted the Reindeer Act while Alaska was still a territory -- over 20 years before Alaska became a state. The Reindeer Act of 1937 was incorporated into the Territorial Laws of Alaska. See, Compiled Laws of Alaska (1949), §§ 33-3-31 -- 33-3-45.

At the time of statehood for Alaska, Congress enacted the Alaska Omnibus Act, Pub. L. No. 86-70, §373, Stat. 141 (1959) (the "Omnibus Act"), which provides, in part, as follows:

Any Territorial law, as that term is defined in section 8(d)[of the Statehood Act], the application of which to the State of Alaska is continued solely by reason of such section 8(d), shall cease to apply to the State of Alaska on June 30, 1961, or on the effective date of any law enacted by the Legislature of the State of Alaska which modifies or changes such Territorial law, whichever occurs first.

Section 8(d) of the Alaska Statehood Act of 1958, Pub. L. No. 35-508, 72 Stat. 339 (the "Statehood Act") defines a Territorial law as any law "the validity of which was dependent solely upon the authority of the Congress to provide for the government of Alaska."

There is no question but that the Reindeer Act is a law that falls within the definition of §8(d) of the Statehood Act. There could be no clearer statement that the power of Congress to enact the Reindeer Act sprang solely from Congress' power to govern the Territory of Alaska than the statement of Representative John E. Rankin to the Chairman of the Committee on the Territories:

THE CHAIRMAN If we were to pass this bill and they should buy up the interests of the nonnatives in reindeer and turn them over to the natives, does

not the bill have a clause that would prevent the non-resident or nonnative from again embarking in the reindeer business?

MR. DIMOND. Yes.

THE CHAIRMAN. If it does, would that be operative? Mr. Rankin is a better lawyer than some of us.

MR. RANKIN. The Territory of Alaska from a constitutional standpoint is in the same position as is the District of Columbia. The question of States' rights does not intervene. We have all the power in the Territory that the State government and the Federal Government combined have in a State.

Id. at 26

From the foregoing, it is evident that at least that portion of the Reindeer Act that "prevent[s] the non-resident or nonnative from again embarking in the reindeer business" depends entirely for its validity upon Congress governmental authority over the people residing in that Territory. In holding that the validity of this provision is "grounded first and foremost in the plenary power of Congress to legislate for the benefit of Alaska Natives," the ISIA was clearly wrong. While Congress may have the power to distribute money and property to, and confer other benefits upon, the Natives in Alaska, that power does not extend to regulating, much less banning, the otherwise lawful activities of non-Natives on their privately owned land.

If any government had such power (and, as argued above, none does), that power could only arise from a government's power to govern and legislate for its own citizens. That power Congress ceded to the State of Alaska at the time of statehood, and those laws, such as the provisions of the Reindeer Act that purport to ban non-Natives in Alaska from engaging in the Reindeer industry, which Congress adopted pursuant to its territorial governing powers, were specifically repealed by Congress with the passage of the Statehood Act and the Omnibus Act.

The conclusion that the Reindeer Act, or certain of its provisions, were repealed by the Statehood Act and the Omnibus Act is especially compelling if this court were to conclude (wrongly, as demonstrated above) that the Reindeer Act should be interpreted as preventing Mr. Williams from "embarking in the reindeer business" with reindeer imported from outside of Alaska. Given Representative Rankin's belief that Congress could prevent non-Natives in Alaska from "embarking in the reindeer business" only because of its territorial governing powers, the case becomes even stronger if the provision is expanded to ban non-Native citizens of the State of Alaska from bringing to Alaska an animal that the citizen could lawfully own in any other state of the union.

Beyond the specific provisions banning the otherwise lawful activity of non-Native citizens of Alaska, history demonstrates that the entire Reindeer Act was an economic endeavor to aid certain people in the Territory of Alaska. See, Ornulv Vorren, *Saami, Reindeer, and Gold in Alaska* (1994). The Reindeer Act was intended to develop a reindeer industry for certain Native Alaskans. Sheldon Jackson, the missionary and government agent who largely inspired the effort to create a reindeer business for western Alaska Natives in the late 1800's and early 1900s, evidently viewed a reindeer industry as a way for indigenous Alaskans to fit into the 20th Century and to overcome loss of wild game in their local areas due to overharvests. Vorren, *id.*

In short, the Reindeer Act was an economic measure rather than an effort to reverse prior racial discrimination. Whether based in part on Congress's authority to deal with Native Americans or on Congress's authority to deal with interstate commerce and with its territories, the 1937 Act's provisions for a Native reindeer industry was a law, "the validity of which was dependent solely upon the authority of Congress to provide for the government of Alaska."

Alaska was admitted to the United States on an equal footing with all other states. Pub. L. 508; 72 Stat. 339. To be the only state in the union where certain people are deprived of the right to engage in the business of reindeer herding because of their race or ethnic origin discredits Congress's assertion of equal footing. The automatic repeal of outdated and racially-biased laws in the Omnibus Act fortified Congress's intent to make Alaska a state with the same opportunities other states had to allow all races to pursue their chosen occupations

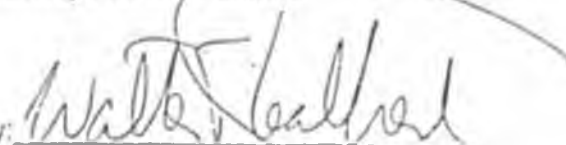
VIII. CONCLUSION

For the reasons stated above, the IBIA erred in ruling that the Reindeer Act prohibits the importation of reindeer reindeer to Alaska by non-Natives. Even apart from the IBIA's error, the Reindeer Act, or portions of it, violate the United States Constitution. Finally, the Reindeer Act, or at least the provisions in it that prohibit non-Natives from owning reindeer in Alaska, were repealed by the Alaska Statehood Act and the Omnibus Act.

WHEREFORE, judgment should be entered in favor of the plaintiffs in accordance with the foregoing conclusions.

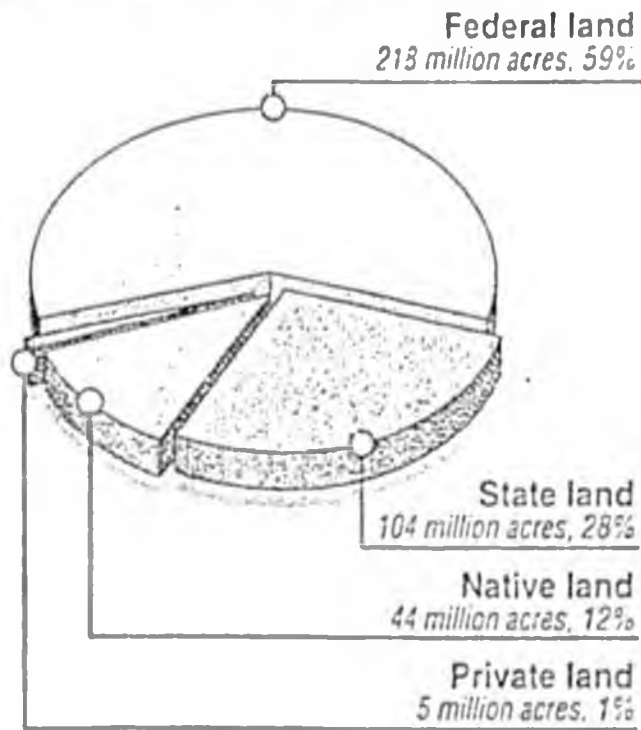
RESPECTFULLY SUBMITTED this 8th day of November, 1994.

Koval & Featherly, P.C.
Attorneys for the Plaintiffs

By: 
Walter T. Featherly

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Who owns Alaska?



Source: Alaska Department of Natural Resources

KEVIN POWELL / Anchorage Daily News

EXHIBIT A

SR

6

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SR 6

Revision Date: 2/23/96 Dept. Affected: _____
 Title: Endorsing changes to federal BRU: _____
Mining Law Component: _____
 Sponsor: Senate Resources Committee
 Requester: Senate Resources Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	-0-	-0-	-0-	-0-	-0-	-0-
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of any current year (FY98) cost: \$ -0-

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This resolution has no fiscal impact on state departments.

Prepared by: SENATE RESOURCES COMMITTEE Phone: 465-4907
 Division: _____ Date: _____

Approved by SENATOR LOREN LAMAN, CHAIRMAN Date: 2/26/96
 Agency: _____

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Chenoweth
2/9/96

SENATE RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RESOURCES COMMITTEE

Introduced:
Referred:

A RESOLUTION

1 Endorsing passage of S. 506 and H.R. 1580, measures making responsible changes
2 in the Mining Law of 1872.

3 **BE IT RESOLVED BY THE SENATE:**

4 **WHEREAS** more than 60 percent of land in the state is federal land; and
5 **WHEREAS** much of this federal land is currently open to mineral entry; and
6 **WHEREAS** much of the federal land in the state, including, for example, the location
7 of the Greens Creek Mine on federal land within the Tongass National Forest, is of high
8 mineral potential; and

9 **WHEREAS** orderly and responsible exploration and development of mineral resources
10 on federal land within the state can do much to diversify and strengthen the state's economy;
11 and

12 **WHEREAS** a significant amount of exploration and development of federal mineral
13 land will take place in rural parts of the state, providing much needed jobs and infrastructure;
14 and

15 **WHEREAS**, as the mining industry evolves, changes in the industry's legal
16 underpinnings should be made, reflecting that applicable law remains cognizant of the

1 industry's technological improvements;

2 **BE IT RESOLVED** that the Alaska State Senate urges the governor, the Alaska
3 Congressional delegation, and the Western Governors' Association to support S. 506 and
4 H.R. 1580, measures proposing responsible changes in the Mining Law of 1872.

5 **COPIES** of this resolution shall be sent to the members of the Western Governors'
6 Association and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S.
7 Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska
8 delegation in Congress.

WORK ORDER REQUEST FORM

W.O. [19] LS-1690

KEYWORDS: MINES/MINERALS **ASSIGNED:** Chenoweth

REQUEST FOR: Resolution **TAKEN BY:** Barnes

SUBJECT: Support Changes in Fed. Mining Law

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

DELIVER TO: Sen. Leman, Cap. 113

INSTRUCTIONS: Draft resolution supporting changes in the federal mining laws, per attached.

<p>OBTAIN</p>	<p>SPECIAL DRAFTING INSTRUCTIONS ATTACHED [] AUTHORIZED TO CONFER WITH _____ _____ RETURN _____ _____ TO REQUESTOR APPROVED: <u> X </u> DIRECTOR, LEGAL SERVICES</p>
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<p>REVIEWED _____ IN <u>02/08/96</u> DUE _____ TYPED: Draft _____ Date _____ Final _____ Date _____ PROOFED _____ DELIVERED _____</p>	<p>SPECIAL INSTRUCTIONS to TYPING/PROOFING _____ _____ Request for DRAFT</p>
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Alaska State Legislature

Official Business

State Capitol
Juneau AK 99801

MEMO

TO: Legal Services
via fax: 2 pages X2029

FROM: Annette Kreitzer Aide to
Senate Resources Committee 

DATE: February 8, 1996

RE: Senate Resolve (one of two)

Please prepare a Senate Resolve using the attached information from the Alaska Minerals Commission. The Resolve is sponsored by the Senate Resources Committee.

182

Annette -
hope this
helps -
Thank much.
AL

FAX: fax # 3810
To: Annette Kreitzer, Senate Resources
From: Al Clough, Trade and Development
Subject: Alaska Minerals Commission

Annette, per your request, following is suggested resolution language for Minerals Commission recommendations 16 (Federal Mining Law) and 17 (ANILCA provisions). Thanks very much for your support.

Minerals Commission Recommendation 16, Mining Law of 1872

The stability of a legal and regulatory system is fundamental to the success of any business activity. In the case of mining on federal lands within the United States this is best illustrated in the Mining Law of 1872. The mining law and case law developed under it has allowed mining to flourish and evolve in the United States for over 100 years. Although the initial law was developed in 1872, numerous amendments and overlay law such as the National Environmental Policy Act, the Clean Water Act and the Clean Air Act assure the mining law is as timely today as it was in 1872 when established. The mining law is not broken and does not require wholesale changes. Nevertheless, an evolving mining industry requires periodic changes in its legal underpinnings to assure timeliness and to meet changes in technology. Current bills before the US Congress, SB 506 and HR 1508, make these necessary changes to the Federal Mining Law of 1872.

Whereas, Over 60% of the State of Alaska is federal land, and

Whereas, much of this federal land is currently open for mineral entry, and

Whereas, many federal lands within Alaska contain high mineral potential such as the Greens Creek mine located on federal lands within the Tongass National Forest, and

Whereas, the orderly and responsible exploration and development of mineral resources on federal lands within Alaska can do much to diversify and strengthen the overall economy of Alaska, and

Whereas, much of the exploration and development of federal mineral lands will take place in rural Alaska providing much needed jobs and infrastructure,

Therefore be it resolved that the Legislature of the State of Alaska urges the Governor, the Alaska Congressional Delegation, and the Western Governors Association to support responsible changes in the Federal Mining Law of 1872, as embodied in SB506 and HR 1508.

- end -

BILL TEXT Report for S.506
As introduced in the Senate, March 7, 1995

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S.506 As introduced in the Senate, March 7, 1995

II

104th CONGRESS
1st Session

S. 506

To amend the general mining laws to provide a reasonable royalty from mineral activities on Federal lands, to specify reclamation requirements for mineral activities on Federal lands, to create a State program for the reclamation of abandoned hard rock mining sites on Federal lands, and for other purposes.

IN THE SENATE OF THE UNITED STATES

March 7 (legislative day, March 6), 1995

Mr. Craig (for himself, Mr. Murkowski, Mr. Reid, Mr. Bryan, Mr. Domenici, Mr. Burns, Mr. Thomas, Mr. Hatch, Mr. Bennett, Mr. Stevens, Mr. Kempthorne, Mr. Kyl, and Mr. Pressler) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the general mining laws to provide a reasonable royalty from mineral activities on Federal lands, to specify reclamation requirements for mineral activities on Federal lands, to create a State program for the reclamation of abandoned hard rock mining sites on Federal lands, and for other purposes.

=====

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 101. SHORT TITLE.

This Act may be cited as "The Mining Law Reform Act of 1995".

SEC. 102. FINDINGS AND PURPOSE.

(a) Findings.--Congress finds and declares that--

(1) a secure and reliable supply of locatable minerals is essential to the industrial base of the United States, national security, and balance of trade;

(2) many of the deposits of locatable minerals that may be commercially developed are on Federal lands as that term is defined in this Act, and are difficult and expensive to discover, mine, extract and process;

(3) the national need for locatable minerals will continue to expand, and without a strong mining industry the demand for the minerals will exceed domestic sources of supply;

(4) mining of locatable minerals is an extremely high-risk, capital-intensive endeavor, which, to attract necessary investment, requires certainty and predictability in access to Federal lands in establishment of mining titles, and in the rights of owners of mining claims or sites to develop minerals;

(5) it is in the national interest to foster and encourage private enterprise in the development of a domestic minerals industry to maintain and create high-paying jobs and the various Federal, State and local taxes paid by the mining industry in the United States;

(6) the diversity in terrain, climate, biological, chemical, and other physical conditions, and variation among the locatable minerals mined and the methods of mining and processing, require that reclamation standards be tailored to local and regional conditions;

(7) there are extensive Federal and State environmental standards that apply to mining operations on Federal lands, including State programs for the protection of ground water quality;

(8) every State containing Federal lands has enacted laws and regulations governing the reclamation of mined lands and, subject to the Supremacy Clause of the United States Constitution, these laws and regulations, including financial assurance requirements, apply to mineral activities on Federal lands;

(9) changes in the general mining laws of the United States to provide more direct economic return to the United States and greater protection of public resources are desirable, so long as the changes do not act as a disincentive to development of minerals, adversely affect employment in the mining industry or in industries that provide goods and services required for mining activities, interfere with a secure and reliable domestic supply of minerals, or adversely affect the balance of trade of the United States; an

(10) mining claims, mill sites and tunnel sites located under the general mining laws are property interests, and any law or regulation that impairs existing property rights may expose the Federal Government to takings claims under the fifth amendment to the United States Constitution.

(b) Purpose.--It is the purpose of this Act to--

(1) promote exploration for and the development of a secure and reliable domestic source of locatable minerals;

(2) provide for increased Federal revenue from the location and production of locatable minerals from Federal lands through fees, patent payments and royalties;

(3) ensure that mineral activities on Federal lands are conducted in compliance with all applicable Federal and State environmental regulations and standards, including standards governing mined land reclamation;

(4) ensure that all Federal lands affected by mineral activities under the general mining laws are reclaimed as required by applicable laws;

(5) establish a program to reclaim abandoned locatable mine sites on Federal lands; and

(6) recognize that unpatented mining claims, mill sites and tunnel sites are property rights in the fullest sense and avoid, to the greatest extent possible, claims of takings of existing property rights under the general mining laws that could require compensation under the fifth amendment to the United States Constitution.

SEC. 103. DEFINITIONS.

When used in this Act--

(1) "Assessment year" means the annual period commencing at 12 o'clock noon on the first day of September and ending at 12 o'clock noon on the first day of September of the following year.

(2) "Federal lands" means, except as provided otherwise in title III, lands and interests in lands owned by the United States that are open to mineral location, or that were open to mineral location when a mining claim or site was located and which have not been patented under the general mining laws.

(3) "General mining laws" means those Acts which generally comprise chapters 2, 11, 12, 12A, 15, and 16, and sections 161 and 162, of title 30 of the United States Code, all Acts heretofore enacted which are amendatory of or supplementary to any of the foregoing Acts, and the judicial and administrative decisions interpreting such Acts.

(4) "Locatable minerals" means those minerals owned by the United States and subject to location and disposition under the general mining laws on or after the effective date of this Act, but not including any mineral held in trust by the United States for any Indian or Indian tribe, as defined in section 2 of the Indian Mineral Development Act of 1982 (25 U.S.C. 2101), or any mineral owned by any Indian or Indian tribe, as defined in that section, that is subject to a restriction against alienation imposed by the United States, or any mineral owned by any incorporated Native group, village corporation, or regional corporation and acquired by the group or corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(5) "Mineral activities" means any activity on Federal lands related to, or incidental to, exploration for or development, mining, production, beneficiation, or processing of any locatable mineral, or reclamation of the impacts of such activities.

(6) "Mining claim or site", except where provided otherwise, means a lode mining claim, placer mining claim, mill site or tunnel site.

(7) "Operator" means any person conducting mineral activities subject to this Act.

(8) "Person" means an individual, Indian tribe, partnership, association, society, joint venture, joint stock company, firm, company, limited liability company, corporation, cooperative or other organization, and any instrumentality of State or local government, including any publicly owned utility or publicly owned corporation of State or local government.

(9) "Secretary" means (i) in titles II and V, the Secretary of the Interior acting through the Bureau of Land Management, (ii) in title IV, the Secretary of the Interior acting through the Bureau of Land Management or the Minerals Management Service, or both, and (iii) elsewhere in this Act, the Secretary of Agriculture, acting through the Forest Service, with respect to lands under the jurisdiction of the Secretary of Agriculture, and the Secretary of the Interior, acting through the Bureau of Land Management, with respect to all other lands subject to the requirements of this Act.

TITLE II--DISPOSITION OF LOCATABLE MINERAL DEPOSITS

SEC. 201. CLAIM MAINTENANCE REQUIREMENTS.

(a) Maintenance Fee.--After the date of enactment of this Act, the owner of each unpatented mining claim or site located pursuant to the general mining laws, whether located before or after the enactment of this Act, shall pay in advance to the Secretary annually on or before September 1, and until a patent has been issued therefor, a maintenance fee of \$100 per mining claim or site. The owner of each unpatented mining claim or site located after the date of enactment of this Act pursuant to the general mining laws shall pay to the Secretary, at the time the copy of the notice or certificate of location is filed with the Bureau of Land Management pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C.

1744(b)), in addition to the location fee required under subsection (f) of this section, an initial maintenance fee of \$100 per mining claim or site for the assessment year which includes the date of location of such mining claim or site. If a mining claim or site is located within ninety days before September 1 and the copy of the notice or certificate of location is timely filed with the Bureau of Land Management under subsection 314(b) of the Federal Land Policy and Management Act of 1976 after September 1, the annual maintenance fee payable under the first sentence of this subsection shall be paid at the time such notice or certificate of location is filed, in addition to the location fee and the initial \$100 maintenance fee. No maintenance fee shall be required if the fee is waived or the owner of the mining claim or site is exempt as provided in section 202 of this Act.

(b) Assessment Work Requirements.--

(1) For the first five assessment years following the assessment year which includes the date of location of any unpatented mining claim or site located on or after the date of enactment of this Act, or for the first five assessment years following the assessment year which includes the date of enactment of this Act for any unpatented mining claim or site located before the date of enactment, the annual maintenance fee under subsection (a) of this section shall be in lieu of the assessment work requirements of the general mining laws and of any other Federal law. Beginning with the sixth assessment year following the assessment year which includes such date of location or enactment, such assessment work requirements shall apply in addition to such annual maintenance fee, subject to any suspension or deferment of annual assessment work provided by law.

(2)(A) Section 1 of the Act of September 2, 1958 (30 U.S.C. 28-1), is amended by inserting "mineral activities, environmental baseline monitoring, and" after "without being limited to" and before "geological, geochemical and geophysical surveys".

(B) Section 2(d) of the Act of September 2, 1958 (30 U.S.C. 28-2(d)), is amended by inserting "environmental baseline monitoring or" after "experience to conduct" and before "geological, geochemical or geophysical surveys."

(C) Section 2 of the Act of September 2, 1958 (30 U.S.C. 28-2), is amended by adding at the end of the following new subsection:

"(e) The term 'environmental baseline monitoring' means activities for collecting, reviewing and analyzing information concerning soil, vegetation, wildlife, mineral, air, water, cultural, historical, archeological or other resources related to planning for or complying with Federal and State environmental or permitting requirements applicable to potential or proposed mineral activities on the claim(s)."

(c) Maintenance Fee Statement.--Each payment under subsection (a) of this section shall be accompanied by a statement which reasonably identifies the mining claim or site for which the maintenance fee is being paid. Such statement may include the name of the mining claim or site, the serial number assigned by the Secretary to such mining claim or site, the description of the book and page in which the notice or certificate of location for such mining claim or site is recorded under State law, any combination of the

foregoing, or any other information that reasonably identifies the mining claim or site for which the maintenance fee is being paid. The statement required under this subsection shall be in lieu of any annual filing requirements for mining claims or sites, under any other Federal law, but shall not supersede any such filing requirement under applicable State law.

(d) Effect of Compliance as Against Subsequent Locators.--

(1) Except as provided in paragraph (d)(2) of this subsection, after the date of enactment of this Act, compliance with the requirements of this section and sections 202 and 203 shall, from the time the location notice or certificate is posted on the land under applicable State law, confer upon the owner of any unpatented mining claim or site, whether located before or after the date of enactment of this Act, an exclusive right of possession, as against subsequent locators, of the land included in such mining claim or site for the purposes described in subsection 203(a). If more than one mining claim or site owned or controlled by the same claim or site owner covers substantially the same land, by reason of the location of one or more mining claims or sites on such land, the amendment or relocation of any such mining claim or site, or otherwise, such exclusive right of possession shall extend to all such mining claims or sites, effective from the time the location notice or certificate for the initial mining claim or site was posted on such land under applicable State law. The order of location, amendment, or relocation of any such mining claims or sites on such land shall not affect the validity of any such mining claim or site. Such owner of the mining claim or site shall not be required to be in actual, physical occupation of such land and shall not be required to exclude rival locators from such land. Such exclusive right of possession shall be subject to applicable Federal law, including the Multiple Mineral Development Act of 1954 (30 U.S.C. 521-31), the Materials Act of 1947 (30 U.S.C. 601-604) and the Surface Resources Act of 1955 (30 U.S.C. 611-15) to the extent applicable, and shall neither enlarge nor diminish any rights of such owner of the mining claim or site as against the United States in such land. This paragraph shall supersede the common law doctrine of pedis possessio.

(2) Conflicts over the right of exclusive possession of land included in any mining claim or site shall be determined in proceedings between owners of mining claims or sites under the provisions of section 910 of the Revised Statutes (30 U.S.C. 53) and other applicable law, including but not limited to the following:

(A) Any conflict based upon circumstances existing as of the date of enactment of this Act between mining claims or sites located before the date of enactment of this Act, which shall be resolved under the law in effect on the day prior to the date of enactment of this Act, including the common law doctrine of pedis possessio.

(B) Any conflict arising on or after the date of enactment of this Act between mining claims or sites located before, on or after the date of enactment over whether either owner of the mining claim or site has complied with the requirements of this section or sections 202 or 203(a), which shall be resolved under this Act.

(e) Failure of Co-Owner To Contribute.--Upon the failure of any one or more of several co-owners of any mining claim or site to contribute such co-owner or owners' portion of the location or maintenance fee under this section, any co-owner who has paid such fee may, after the payment due date, serve the delinquent co-owner or owners with notice of such failure in writing or, if such delinquent co-owner or owners cannot be located after reasonable efforts, by publication in a general circulation newspaper published in a location nearest the mining claim or site at least once a week for at least ninety days. If at the expiration of ninety days after such notice in writing or by publication, any delinquent co-owner fails or refuses to contribute the owed portion, such co-owner or owners' interest shall become the property of the owner or co-owners who have paid the required fee.

(f) Location Fee.--The owner of each unpatented mining claim or site located on or after the date of enactment of this Act pursuant to the general mining laws shall pay to the Secretary, at the time the notice or certificate of location is filed with the Bureau of Land Management pursuant to subsection 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(b)), a location fee of \$25 per claim.

(g) Credit Against Royalty.--The annual claim maintenance fee paid for any unpatented mining claim or site on or before September 1 of any year shall be credited against the amount of royalty required to be paid under title IV for such mining claim or site during the following assessment year.

(h) Fee Adjustments and Disposition.--

(1) At the end of each period of five assessment years after the date of enactment of this Act, the Secretary shall adjust the maintenance fee and the location fee required by this section by an amount equal to the net adjustment in the implicit price deflator for the gross national product established by the United States Department of Commerce over the preceding five-year period, rounded up or down to the nearest dollar.

(2) The Secretary shall provide owners of mining claims or sites with notice by publication in the Federal Register of any adjustment made under paragraph (1) not later than January 1 of any assessment year in which the adjustment is made.

(3) A fee adjustment under paragraph (1) shall apply to the payment due for the next assessment year after the assessment year in which notice is given under paragraph (2).

(4) All maintenance and location fees received by the Secretary under this section shall be paid into the Treasury of the United States and be subject to the provision of title I of Public Law 100-446, 102 Stat. 1774 (43 U.S.C. 1474) making receipts available for use by the Secretary for program operations in Mining Law Administration.

(i) Oil Shale Claims Subject to Claim Maintenance Fee Under Energy Policy Act of 1992.--This section shall not apply to any oil shale claims for which a fee is required to be paid under paragraph 2511(e)(2) of the Energy Policy Act of 1992 (30 U.S.C. 242(e)(2)).

(j) Failure To Comply.--The failure of the owner of the mining claim or site to pay the claim maintenance fee or location fee for a mining claim or site on or before the date such payment is due under subsection (a) or subsection (f) of this section shall constitute forfeiture of the mining claim or site and such mining claim or site shall be null and void, effective as of the day after the date such payment is due: Provided, however, That, if such maintenance fee or location fee is paid or tendered on or before the thirtieth day after such payment was due under subsection (a) or subsection (f) of this section, such mining claim or site shall not be forfeited or null or void, and such maintenance fee or location fee shall be deemed timely paid.

(k) Repeal of Omnibus Budget Reconciliation Act Fee Requirements.-- Sections 10101 through 10106 of the Omnibus Budget Reconciliation Act of 1993 (30 U.S.C. 28f-28k) are hereby repealed.

(l) Conforming Amendment.--The third sentence of section 2324 of the Revised Statutes (30 U.S.C. 28) is amended by adding the words "Except as provided in paragraph 201(b)(1) of the Mining Law Reform Act of 1995," at the beginning of such sentence and deleting the words "that is granted a waiver under section 10101 of the Omnibus Budget Reconciliation Act of 1993,".

(m) Amendment of FLPMA Filing Requirements.--

(1) Section 314(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(a)) is hereby repealed.

(2) Section 314(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(c)) is amended to read as follows:

"(c) Failure To File as Constituting Forfeiture; Defective or Untimely Filing.--The failure to timely file the copy of the notice or certificate of location is required by subsection (b) shall constitute forfeiture of the mining claim and such claim shall be null and void by operation of law: Provided, however, That it shall not be considered a failure to file if the notice or certificate of location is defective or not timely filed for record under other State or Federal laws permitting or requiring the filing or recording thereof, or if the copy of the notice or certificate is filed by or on behalf of some but not all of the owners of the claim."

SEC. 202. WAIVER AND EXEMPTION.

(a) Waiver of Fee.--The maintenance fee provided for in subsection 201(a) shall be waived for the owner of a mining claim or site who certifies in writing to the Secretary, on or before the date the payment is due, that, as of the date such payment is due, such owner and all related persons own not more than twenty-five unpatented mining claims or sites. Any owner of a mining claim or site that is not required to pay a maintenance fee under this subsection shall continue to be subject to the assessment work requirements of the general mining laws or of any other State or Federal law, subject to any suspension or deferment of annual assessment work provided by law, for the assessment year following the filing of the certification, and paragraph 201(b)(1) of this Act shall not apply.

(b) Related Persons.--As used in subsection (a), the term "related persons" includes--

(1) the spouse and dependent children (as defined in section 152 of the Internal Revenue Code of 1986), of the owner of the mining claim or site; and

(2) a person controlled by, controlling, or under common control with the owner of the mining claim or site.

(c) Exemption.--The owner or any mining claim or site who certifies in writing to the Secretary on or before the first day of any assessment year that access to such mining claim or site was denied or impeded during the prior assessment year by the action or inaction of any local, State, or Federal governmental officer, agency, or court, or by any Indian tribal authority, shall be exempt from the maintenance fee and assessment work requirements of subsections (a) and (b) of section 201 for the assessment year following the filing of the certification.

SEC. 203. GOOD FAITH REQUIREMENT; RESIDENTIAL OCCUPANCY; DIVESTMENT AND REVERTER.

(a) Good Faith Holding of Mining Claim or Site.--The location, maintenance, and use of an unpatented mining claim or site, whether located before or after enactment of this Act, shall be for the purpose of conducting mineral activities in good faith.

(b) Residential Occupancy.--The Secretary shall not prohibit residential occupancy of an unpatented mining claim or site and shall not require removal of equipment or facilities until mineral activities are completed, if such occupancy is shown in a notice of intent or plan of operations to be reasonably required to accomplish the mineral activities described therein.

(c) Divestment and Reverter.--

(1) Notwithstanding any other provision of law, a patent issued under section 204(a) shall be divested if it is used for any purpose other than for conducting mineral activities in good faith and such unauthorized use is not discontinued as provided in paragraph (c)(2). Upon occurrence of the foregoing condition, the State in which such patented estate is located shall have an election to receive such patented estate as provided in paragraph (c)(4). If such State elects not to receive such patented estate or fails to exercise its election in the time specified in paragraph (c)(5), all right, title and interest in such estate shall revert to the United States.

(2) If the patented estate is used for any purpose other than for conducting mineral activities in good faith, the Secretary shall serve on all owners of interests in such patented estate and the Governor of the State in which the patented estate is located, in the manner prescribed for service of a summons and complaint under the Federal Rules of Civil Procedure, notice specifying such unauthorized use and providing not more than ninety days in which such unauthorized use must be terminated. The giving of such notice shall constitute final agency action appealable by any owner of an interest in such patented estate. The Governor of the

State in which such patented estate is located or the Secretary may exercise their respective rights provided herein below in paragraph (c)(4) and paragraph (c)(5) if such unauthorized use has not been terminated in the time provided in this paragraph, and only after all appeal rights have expired and any appeals of such notice have been finally determined.

(3) Within one hundred and eighty days after the expiration of the time provided in the notice given by the Secretary under paragraph (c)(2), or within one hundred and eighty days after all appeals rights have expired and any appeals of such notice have been finally determined, whichever is the later to occur, the Governor of the State in which such patented estate is located may elect for such State to receive title to such patented estate by filing in the office of the Bureau of Land Management designated by the Secretary, and recording in the office where the notice or certificate of location for the patented claim or site is recorded under State law a declaration of the State's election to receive such interest. Upon the filing and recording of such declaration, all right, title, and interest in such patented estate shall vest in such State, subject to the payment by such State to the United States of one-half of all revenues, including without limitation, rentals, royalties, and severance or other taxes, from future mineral production from such patented lands. If the Governor of the State for any reason determines that receipt of such patented estate would not be in the best interests of the State for any reason, the Governor shall file and record a declaration of the State's election not to receive such interest within one hundred and eighty days and in the same manner as prescribed above.

(4) Within one hundred and eighty days after the filing and recording of a declaration by the State not to receive the patented estate as provided in paragraph (c)(4), or within one hundred and eighty days after the expiration of the one hundred and eighty-day period described in such paragraph if the Governor fails to file and record either of the instruments described in such paragraph, the Secretary may exercise the right of the United States to reenter such patented estate by filing a declaration of reentry in the office of the Bureau of Land Management designated by the Secretary and recording such declaration where the notice or certificate of location for the patented claim or site is recorded under State law. Upon the filing and recording of such declaration, all right, title and interest in such patented estate shall revert to the United States.

SEC. 204. PATENTS.

(a) In General.--Any patent issued by the United States under the general mining laws after the date of enactment of this Act shall be issued only--

(1) upon payment by the owner of the mining claim or site of the fair market value for the interest in the land owned by the United States exclusive of and without regard to the mineral deposits in the land or the use of the land for mineral activities; and

(2) subject to reservation by the United States of the royalty provided in title IV, unless the requirements of subsection (b) are met.

(b) Patent Transition.--(1) Notwithstanding any other provision of law, a mineral survey application or patent application for any unpatented mining claim or site shall be processed and a patent shall be issued pursuant to the general mining laws in effect on the date immediately preceding the date of enactment of this Act and upon payment of fair market value for the surface as provided in paragraph (a)(1) if--

(A) a copy of the notice or certificate of location was filed with the Bureau of Land Management pursuant to subsection 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(b)) for the mining claim or site on or before March 7, 1995; and

(B) the owner of the mining claim or site has filed a patent application or mineral survey application prior to the date of enactment of this Act, or files such an application with the Bureau of Land Management within one year after the date of enactment of this Act: Provided, That any patent application must be filed before or within one year after the date of enactment of this Act, or within one hundred and eighty days after the owner of the mining claim or site receives the certificate of approval by the Bureau of Land Management of the mineral survey, whichever date is later: Provided further, That a patent application or mineral survey application shall be deemed timely filed if the application is filed within the prescribed period, notwithstanding that the Bureau of Land Management may require that the application be corrected or supplemented and resubmitted.

(2) During the one year period prescribed in paragraph (1)(B), or while there is pending a mineral survey or patent application to which this subsection applies, an owner of the mining claim or site may continue work on a mining claim or site directed toward establishment and confirmation of entitlement to a patent, and may amend the applications as necessary.

(c) Repeal of Patenting Moratorium; Processing of Patent Applications.--(1) Sections 112 and 113 of Public Law 103-332 are hereby repealed. The Secretary shall diligently process all applications for patent and shall make determinations for all such applications regarding patent issuance as expeditiously as possible.

(2) The provisions of this Act shall not apply to any mining or mill site claim: (A) for which a patent application was filed with the Secretary on or before the date of enactment of Public Law 93-332; and (B) for which the applicant had fully complied with the requirements established under sections 2325 and 2326 of the Revised Statutes (30 U.S.C. 29 and 30) for vein or lode claims and sections 2329, 2330, 2331, and 2333 of the Revised Statutes (30 U.S.C. 35, 36, and 37) for placer claims, and section 2337 of the Revised Statutes (30 U.S.C. 42) for mill site claims, whichever the case.

TITLE III--SURFACE MANAGEMENT OF MINERAL ACTIVITIES

SEC. 301. PURPOSE; APPLICABILITY; OPERATING AND RECLAMATION STANDARDS.

(a) Purpose.--It is the purpose of this title to provide for mineral entry, exploration, location and operations pursuant to the general mining laws in a manner that will not unduly hinder such activities or diminish rights, including but not limited to all statutory and common law rights of access, obtained under the general mining laws or other authorities, but will assure that such activities are conducted in a manner that will prevent unnecessary and undue degradation of nonmineral surface resources on Federal lands. Compliance with the provisions of this title shall constitute a compliance with--(i) the final sentence of subsection 302(b) of the Federal Land Policy and Management Act (43 U.S.C. 1732(b)); and (ii) any standard related to the management of surface resources within the National Forest System contained in or derived from the Organic Administration Act (16 U.S.C. 473 et seq.), the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601 et seq.), or any other law applicable to Federal lands subject to this title within the National Forest System.

(b) Applicability.--This title shall apply only to mineral activities on those Federal lands where the surface estate is managed by the Bureau of Land Management or the United States Forest Service.

(c) Operations.--All mineral activities on Federal lands shall be conducted so as to prevent unnecessary and undue degradation of Federal lands by complying with applicable requirements of Federal and State environmental protection laws, including but not limited to--

- (1) the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);
- (2) the Clean Air Act (42 U.S.C. 7401 et seq.);
- (3) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);
- (4) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);
- (5) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);
- (6) the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.);
- (7) the Federal Water Pollution Control Act (commonly referred to as the "Clean Water Act") (33 U.S.C. 1251 et seq.);
- (8) the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.);
- (9) the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.);
- (10) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
- (11) the National Historic Preservation Act (16 U.S.C. 470 et seq.);

(12) title XIV of the Public Health Service Act (commonly referred to as the "Safe Drinking Water Act") (42 U.S.C. 300f et seq.);

(13) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(14) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

(15) the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 et seq.).

(d) Reclamation.--In order to prevent unnecessary and undue degradation of surface resources, Federal lands disturbed by mineral activities shall be reclaimed, to the extent economically and technically practicable, in compliance with the provisions of subsection 304(a).

(e) Designated Lands.--Where any mineral activities are to be conducted on Federal lands administered by the Bureau of Land Management or the Forest Service specifically designated by any special Act of Congress that applies a specific land management, resource protection or reclamation standard (such as wild and scenic rivers and designated wilderness) to such lands, such management or protection standard shall apply to the extent of any conflict with the provisions of this title.

SEC. 302. AUTHORIZATION FOR MINERAL ACTIVITIES.

(a) In General.--Except as otherwise provided in subsections (b) and (c) of this section, no person may engage in mineral activities on Federal lands unless that person has filed a plan of operations with, and received approval of the plan from, the Secretary in accordance with section 303.

(b) Notice Required.--

(1) A person may engage in mineral activities on Federal lands that cause only minor, short term, readily reclaimable impacts on surface resources, including but not limited to initial exploratory test hole drilling and road construction, only after filing with the Secretary a notice of intent to conduct such activities.

(2) Such notice shall include--

(A) the name and mailing address of the operator;

(B) when applicable, the name of the mining claim(s) or site(s), and serial number(s) assigned to the mining claims(s) or site(s) on which mineral activities are proposed;

(C) a statement describing the activities proposed and their location in sufficient detail to locate the operations on the ground, and giving the approximate date when activities will begin. The statement shall include a description and the location of any access routes to be constructed or improved and the type of equipment to be used in their construction;

(D) a statement that reclamation of all areas will be completed as required by subsection 301(d), and that mineral activities will comply with the operations standard as required by subsection 301(c); and

(E) evidence of financial assurance as required by section 306.

(3) Failure of the operator to conduct mineral activities in conformance with the notice and the requirements of this title may cause the operator to be subject to enforcement pursuant to section 308.

(4) The Secretary shall review the notice within thirty days of receipt. If the Secretary determines that the proposed mineral activities will, or are likely to cause more than minor, short term, readily reclaimable impacts on surface resources, the Secretary shall provide a statement of reasons explaining why the mineral activities cannot proceed under notice and shall require in writing that the operator submit a proposed plan of operations in accordance with the requirements of this section. Failure of the Secretary to respond in writing within thirty days of receipt of the notice shall be deemed to be approval of the mineral activities proposed in the notice.

(5) The Secretary shall establish by regulation from time to time additional categories of mineral activities which may be conducted under notice based on the amount of surface to be disturbed, the type of equipment to be used, the time required for reclamation, and other relevant factors.

(c) Other Mineral Activities.--Notwithstanding the provisions of subsections (a) and (b), any person may conduct mineral activities on Federal lands which cause only a minimal disturbance of surface resources, including but not limited to claim location; exploration; geological, geophysical or geochemical surveys; environmental baseline monitoring; activities related to the gathering of data related to the preparation or analysis of a notice or plan of operations under this title, or required under any other applicable Federal or State environmental law or regulation; and other activities designated by the Secretary, without filing a notice or plan of operations with the Secretary.

(d) Transfer of Rights.--An operator may transfer, assign or sell any rights associated with a notice without approval by the Secretary: Provided, That the successor in interest agrees in writing to assume the liabilities and reclamation responsibilities established under subsection (b) and provide evidence of financial assurance as required under section 306. The transfer, assignment or sale shall not become effective prior to the filing of such writing and evidence of financial assurance with the Secretary. The financial assurance of the transferee shall be substituted for the assurance previously submitted by the transferor and the financial assurance of the transferor shall be fully released.

SEC. 303. PLAN OF OPERATIONS; CONTENT, REVIEW AND APPROVAL

(a) Plans of Operations Requirements.--A plan of operations required under this title shall contain--

(1) the name and mailing address of the operator,

(2) when applicable, the name of the mining claim(s) or site(s), and serial number(s) assigned to the mining claim(s) or site(s) on which mineral activities are proposed;

(3) a general description of the mineral activities proposed, including the anticipated periods during which the proposed mineral activities will occur;

(4) a map showing existing and/or proposed routes of surface access, or other means of access, and identifying areas where surface disturbance will occur;

(5) information describing the land and water resources of the area expected to be disturbed by the proposed mineral activities and any proposed mitigation measures necessary to comply with the requirements of this title;

(6) a reclamation plan which includes proposed measures to reclaim Federal lands disturbed by the proposed mineral activities as required under subsection 301(d);

(7) evidence of adequate financial assurance as required under section 306; and

(8) a monitoring plan to assure compliance with the requirements of the plan of operations.

(b) Plan of Operations Review.--A proposed plan of operations shall be submitted to the Secretary, who shall promptly acknowledge receipt thereof to the operator. The Secretary shall promptly review the proposed plan of operations and shall notify the operator within thirty days--

(1) that the plan of operations has been approved as submitted;

(2) of all changes in, or additions to the proposed plan of operations necessary to comply with the requirements of this title; or

(3) that a specified reasonable amount of time is necessary to complete the review, setting forth the circumstances which justify the additional time.

(c) Mineral Activities Pending Review.--Any operator who has submitted a plan of operations under this section may continue to conduct mineral activities otherwise authorized pursuant to subsections (b) and (c) of section 302 within the geographic area covered by the proposed plan of operations pending its approval.

(d) Plan of Operations Approval.--(1) The Secretary shall approve a proposed plan of operations within a reasonable period of time if--

(A) the proposed plan of operations substantially complies with the requirements of this title; and

(B) the applicant has complied with the requirements of section 306 concerning financial assurance.

(2) If, after review, the Secretary determines that a proposed plan of operations will not substantially comply with the requirements of this title, the Secretary shall specify all deficiencies in the proposed plan, shall request the operator to modify the proposed plan to comply with the requirements of this title and shall specify all necessary modifications to the proposed plan.

(e) Modifications to an Approved Plan of Operations.--

(1) Minor modifications.--At any time during which mineral activities are being conducted under an approved plan of operations, an operator may make minor modifications to the approved plan of operations by notifying the Secretary. Failure of the Secretary to respond in writing within thirty days of receipt of the proposed minor modification shall be deemed to be approval of the minor modification. For purposes of this title, a "minor modification" is a change to the approved plan of operations that is not likely to result in significant impacts to surface resources different from those previously considered in the approved plan of operations.

(2) Review of minor modifications.--If the Secretary determines that a proposed minor modification may be significant, the Secretary shall provide a statement of reasons and may require the operator to submit a significant modification to the plan of operations pursuant to paragraph (3) of this subsection.

(3) Significant modification.--At any time during activities under an approved plan of operations, the operator may propose a significant modification to the approved plan of operations. A significant modification must be submitted, reviewed and approved in the same manner as a plan of operations under this section, except that the modification need not include information required under subsection 303(a) if the modification requires no change to such information: Provided, however, That approval of such modification shall neither require nor be denied or conditioned upon retrofit, redesign, reconstruction, closure or change in the operation of any facility, structure or mineral activity previously approved. For purposes of this title, a "significant modification" is a change to the approved plan of operations which is likely to result in significant impacts to surface resources different from those previously considered in the approved plan of operations.

(4) Request by secretary.--At any time during which mineral activities are being conducted under an approved plan of operations, the Secretary may request that an operator submit a modification to the approved plan of operations together with a written determination that such modification is necessary to prevent unnecessary and undue degradation of Federal lands as required by section 301. The Secretary's determination that a modification is necessary shall be subject to notice to the operator and a right to a hearing at the request of the operator. If the Secretary has requested a modification under this paragraph, mineral activities may continue in accordance with the approved plan of operations until the modification is submitted, reviewed and approved.

(f) Term.--An approved plan of operations shall remain in effect as approved until the mineral activities subject to the approved plan of operations are completed or until the plan of operations is modified.

(g) Transfer of Rights.--An operator may transfer, assign or sell any rights associated with an approved plan of operations without approval by the Secretary, provided that the successor in interest agrees in writing to assume the liabilities and reclamation responsibilities established by the approved plan of operations and provide evidence of financial assurance as required under section 306. The transfer, assignment or sale shall not become effective prior to the filing of such writing and evidence of financial assurance with the Secretary. The financial assurance of the transferee shall be substituted for the assurance previously submitted by the transferor, and the financial assurance of the transferor shall be fully released.

SEC. 304. RECLAMATION.

A reclamation plan submitted with a proposed plan of operations pursuant to section 303 shall include appropriate measures to comply with substantive reclamation requirements of the State in which the proposed mineral activities will be located to the extent that those requirements are not in conflict with the purposes of the general mining laws and this Act, and the applicable provisions of State and Federal environmental protection laws, including those Federal laws listed in subsection 301(c). A proposed reclamation plan that complies with such State and Federal requirements shall be deemed sufficient to prevent unnecessary and undue degradation and to comply with subsection 301(d), and certification or other approval issued by a State or Federal agency of compliance with such laws shall be deemed compliance with this section.

SEC. 305. TRANSITION RULES.

(a) Applicability to Existing Operations.--Mineral activities for which an operator is authorized to proceed under notice or for which a plan of operations has been approved prior to the date of enactment of this Act shall continue under the terms and conditions of such notice or plan. Notices which were filed within thirty days of the effective date of enactment, and plans of operations which have been submitted before but not approved on the date of enactment of this Act, shall be reviewed based on the law existing on the day prior to the date of enactment of this Act. Significant modifications to approved plans of operations shall be submitted, reviewed and approved pursuant to the applicable requirements of this title: Provided, however, That approval of such modifications shall neither require nor be conditioned upon retrofit, redesign, reconstruction or change in the operation of any facility, structure or mineral activity previously approved.

(b) Financial Assurance and Enforcement.--Notwithstanding the provisions of subsection (a), the enforcement provisions of section 308 shall apply to all mineral activities on the effective date of this Act and, within one year after the effective date of this Act, all operators operating under notice or a plan of operations shall submit to the Secretary evidence of adequate financial assurance as may be required under section 306.

SEC. 306. FINANCIAL ASSURANCE.

(a) Evidence of Financial Assurance.--(1) Prior to the commencement of any mineral activities requiring a plan of operations, an operator shall furnish evidence to the Secretary of a bond, surety, self-insurance or other financial assurance (including the use of bonding pools or a financial assurance instrument posted with a State or another Federal agency) in an amount sufficient to cover the reasonably estimated cost to complete reclamation as required by the plan of operations.

(2)(A) Prior to conducting notice activities subject to subsection 302(b), the operator shall comply with the financial assurance requirements promulgated by the Secretary applicable to such notice activities. Such requirements shall allow operators or owners of mining claims or sites to use bonding pools or statewide or nationwide bonds. Statewide or nationwide bonds shall be in amounts fixed by regulation that cover notice activities at multiple locations statewide or nationwide, as appropriate.

(B) For such notice activities conducted between the date of enactment of this Act and the effective date of such regulations, the operator or owner of the mining claim or site shall provide evidence of financial assurance, in the form and manner authorized by the Secretary's regulations in effect on the date of enactment of this Act, in an amount sufficient to cover the reasonably estimated cost of reclamation required as a result of such notice activities.

(b) Review and Adjustment.--Not later than five years after the financial assurance is provided, and each five years thereafter, or at the request of the operator, the Secretary shall review its adequacy and may increase or decrease the amount of the financial assurance based upon changed circumstances, including a determination by the Secretary that a portion of the reclamation has been completed.

(c) Financial Assurance For Increments.--Financial assurance for increments of mineral activities may be authorized if the financial assurance for an increment covers all reclamation costs within the area covered by the notice or plan or operations for that increment. After reclamation is completed, an operator may apply for, and the Secretary may grant, release the financial assurance for the completed increment.

SEC. 307. FEDERAL AND STATE AUTHORITY AND COOPERATION.**(a) Cooperative Agreement.--**

(1) Upon request from a State, the Secretary shall enter into a cooperative agreement with that State for joint administration of the requirements of this title relating to mineral activities requiring a notice or plan of operations, financial assurances, reclamation, inspection and enforcement if the Secretary determines in writing that such State has the capability to implement the agreement in a manner consistent with the purposes of this title. A cooperative agreement may cover (i) some or all of the responsibilities enumerated in this paragraph, and (ii) some or all mineral activities on Federal land within a State.

(2) Under a cooperative agreement, a State and the Secretary may jointly administer mineral activities on Federal lands. The State and the Secretary shall make an independent and timely decision regarding individual plans of operation under this title, but in no event shall the State's authority under applicable Federal environmental protection statutes be restricted.

(3) Under a cooperative agreement, the State may conduct inspections and monitoring activities, and take enforcement actions deemed necessary to determine or require compliance with the requirements of this Act, other than recommending civil actions under section 308. The Secretary may not take enforcement action where a State under a cooperative agreement already has initiated appropriate enforcement action unless the State requests that the Secretary recommend initiation of a civil action under section 308.

(4) Under a cooperative agreement, the financial assurance sufficient to cover reclamation of Federal lands shall be calculated based on the completion of both the Federal and State reclamation requirements, and may be held as one bond. The financial assurance shall be approved by both the Secretary and the State prior to approval of a plan of operations, and the Secretary and the State may agree that the financial assurance may not be released without Federal and State concurrence. Financial assurance that duplicates financial assurance required under other State or Federal law shall not be required under this title.

(5) If a cooperative agreement is entered into pursuant to this section, the Secretary shall, subject to appropriations, reimburse the State for its regulatory costs in an amount approximating, but not exceeding, the reasonably estimated amount the Secretary would have reasonably expended absent a cooperative agreement.

(6) Each cooperative agreement entered into pursuant to this section shall provide that (i) the Secretary shall take appropriate action, including termination of the agreement, upon a determination that State performance under the agreement is not in substantial compliance with the agreement or the requirements of this title, and (ii) prior to taking any such action, the Secretary shall provide notice to the State allowing the State a reasonable time to come into substantial compliance.

(b) Existing Agreements.--Any cooperative agreement or memorandum of understanding between the Secretary and any State related to the surface management of mineral activities on Federal lands subject to this Act in existence on the date of enactment of this Act shall continue in force unless the Secretary determines such agreement or memorandum of understanding is inconsistent with the provisions of this title.

SEC. 308. ENFORCEMENT, ADMINISTRATIVE AND JUDICIAL REVIEW.

(a) Inspections.--The Secretary, or a State if the State has entered into a cooperative agreement pursuant to section 307, shall conduct a minimum of one complete inspection each year of mineral activities for which a plan of operations or notice is required under section 302 to ensure compliance with the terms of the plan or notice. The operator shall grant access at reasonable times and under reasonable circumstances to the appropriate

designated representative of the Secretary or State when requested. The Secretary or the State must give reasonable notice to the operator before commencing any inspection. The Secretary or the State may inspect more frequently, if warranted, and may modify the inspection schedule as necessary for mineral activities that are conducted on a seasonal basis.

(b) Compliance Orders.--

(1) Whenever, on the basis of any inspection authorized by subsection (a), the Secretary finds that the operator is in violation of any term or condition of a plan of operations or notice, the Secretary may issue an order requiring the operator to comply with such requirement, or may request the Attorney General to bring a civil action in accordance with subsection (c): Provided, however, That the Secretary shall not request commencement of a civil action if (i) the violation is corrected within thirty days, and (ii) the violation is neither causing nor likely to cause irreparable harm to the environment or a threat to human health or safety.

(2) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and shall require compliance within a reasonable period of time specified in the order. The Secretary may extend the time specified for compliance for a reasonable period, considering the seriousness of the violation and any good faith efforts to comply with the terms and conditions of the plan of operation.

(c) Civil Actions.--At the request of the Secretary, the Attorney General may institute a civil action in the district court of the United States for the district in which the affected operation is located for a temporary restraining order, injunction, civil penalties as provided in subsection (d), or other appropriate remedy, when the operator (i) violates or refuses to comply with an order issued by the Secretary under subsection (b), or (ii) refuses to allow an inspection authorized under subsection (a).

(d) Civil Penalties.--An operator that fails to comply with the requirements applicable to mineral activities conducted under notice pursuant to section 302 or the terms or conditions a plan of operations approved under section 302, after notice of such failure and expiration of a reasonable period allowed for abatement as specified pursuant to subsection (b), is subject to a civil penalty of not more than \$5,000 for each day of the continuance of such noncompliance. In determining the amount of the penalty, the court shall consider the existence of previous violations at the operation, the seriousness of the violation, the likelihood of irreparable harm to the environment and any hazard to the health or safety of the public, whether the operator was negligent, and the good faith of the operator.

(e) Administrative Review.--

(1) Any operator issued a compliance order under this section may apply to the Secretary for review of the order within thirty days of receipt thereof, or as the case may be, within thirty days of such order being modified.

(2) The Secretary shall provide an opportunity for a hearing on the record at the request of the operator.

(3) Pending completion of any review proceedings under this subsection, the operator may file with the Secretary a written request that the Secretary grant temporary relief from any order issued under this section, supported by a detailed statement of reasons for such relief. The Secretary shall expeditiously issue an order or decision granting or denying such relief.

(f) Final Agency Action.--Final agency action under this title shall be subject to judicial review pursuant to 5 U.S.C. 701-706 and 28 U.S.C. 1331.

SEC. 309. SAVINGS CLAUSE.

The provisions of this title shall supersede any provision of the general mining laws of the Federal Land Policy and Management Act, and any standard related to the management of surface resources within the National Forest System contained in or derived from the Organic Administration Act (16 U.S.C. 473 et seq.), the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601 et seq.), or any other law applicable to Federal lands subject to this title within the National Forest System, and any rules promulgated under such laws, only to the extent that such laws or rules conflict or are inconsistent with the provisions of this title. Orders, rules and regulations in effect as of the date of enactment of this Act which govern surface management of mineral activities shall remain in effect under the authority of this title.

TITLE IV--ROYALTY

SEC. 401. ROYALTY.

(a) In General.--The production and sale of locatable minerals (including associated minerals) from any unpatented mining claim (other than those from Federal lands to which subsection 204(b) applies) or any mining claim patented under subsection 204(a) shall be subject to a royalty of three percent of the Net Proceeds from such production mined and sold from such claim: Provided, That for any mine with an annual Gross Yield of less than \$500,000 the royalty shall be waived: Provided further, That no royalty shall be payable pursuant to this title with respect to minerals processed at a facility by the same person or entity which extracted the minerals if an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974 with respect to any portion of such facility. The obligation to pay royalties hereunder shall accrue only upon the sale of locatable minerals or mineral products produced from a mining claim subject to such royalty, and not upon the stockpiling of the same for future processing.

(b) Definitions.--For the purposes of this title, the term--

(1) "Gross Yield" shall mean--

(A) in the case of sales of gold and silver ore, concentrates or bullion, or the sales of other locatable minerals in the form of ore or concentrates, the actual proceeds of sale of such ore, concentrates or bullion;

(B) in the case of sales of beneficiated products from locatable minerals other than those subject to section 401(b)(1)(A), such as cathode, anode or copper rod or wire, or other products fabricated from the locatable minerals, the gross income from mining derived from the first commercially marketable product determined in the same manner as under section 613 of the Internal Revenue Code;

(C) in the event that ore, concentrates, beneficiated or fabricated products or locatable minerals are used or consumed and are not sold in an arms length transaction, the reasonable fair market value of the ore, concentrates, beneficiated or fabricated products at the mine or wellhead determined from the first applicable of the follows:

(i) published or other competitive selling prices of locatable minerals of like kind and grade;

(ii) any proceeds of sale;

(iii) value received in exchange for any thing or service; or

(iv) the value of any locatable minerals in kind or used or consumed in a manufacturing process or in providing a service; and

(D) without limiting the foregoing, the profits or losses incurred in connection with forward sales, futures or commodity options trading, metal loans, or any other price hedging or speculative activity or arrangement shall not be included in Gross Yield.

(2) "Net Proceeds" shall mean Gross Yield, less the following deductions for costs incurred prior to sale or value determination, and none other:

(A) The actual cost of extracting the locatable mineral.

(B) The actual cost of transporting the locatable mineral from the claim to the place or places of reduction, beneficiation, refining, and sale.

(C) The actual cost of reduction, beneficiation, refining, and sale of the locatable mineral.

(D) The actual cost of marketing and delivering the locatable mineral and the conversion of the locatable mineral into money.

(E) The actual cost of maintenance and repairs of--

(i) all machinery, equipment, apparatus, and facilities used in the mine;

(ii) all crushing, milling, leaching, refining, smelting, and reduction works, plants, and facilities; and

(iii) all facilities and equipment for transportation;

(F) The actual cost for support personnel and support services at the mine site, including without limitation, accounting, assaying, drafting and mapping, computer services surveying, housing, camp, and office expenses, safety, and security.

(G) The actual cost of engineering, sampling, and assaying pertaining to development and production.

(H) The actual cost of permitting, reclamation, environmental compliance and monitoring.

(I) The actual cost of fire and other insurance on the machinery, equipment, apparatus, works, plants, and facilities mentioned in subparagraph (E).

(J) Depreciation of the original capitalized cost of the machinery, equipment, apparatus, works, plants, and facilities listed in subparagraph (E). The annual depreciation charge shall consist of amortization of the original cost in the manner consistent with the Internal Revenue Code of 1986, as amended from time to time. The probable life of the property represented by the original cost must be considered in computing the depreciation charge.

(K) All money expended for premiums for industrial insurance, and the owner paid cost of hospital and medical attention and accident benefits and group insurance for all employees engaged in the production or processing of locatable minerals.

(L) All money paid as contributions or payments under State unemployment compensation law, all money paid as contributions under the Federal Social Security Act, and all money paid to State government in real property taxes and severance or other taxes measured or levied on production, or Federal excise tax payments and payments as fees or charges for use of the Federal lands from which the locatable minerals are produced.

(M) The actual cost of developmental work in or about the mine or upon a group of mines when operated as a unit.

(c) Limitations and Allocations of Net Proceeds, Gross Yield, and Allowable Costs--

(1) The several deductions listed in paragraph (b)(2) are intended to allow a reasonable allowance for overhead: Provided, That they do not include any expenditures for salaries, or any portion of salaries, of any person not actually engaged in--

(A) the working of the mine;

(B) the operating of the leach pads, ponds, plants, mills, smelters, or reduction works;

(C) the operating of the facilities or equipment for transportation; or

(D) superintending the management of any of those operations described in subparagraphs (A)-(C).

(2) Ores or solutions of locatable minerals may be extracted from mines comprised of mining claims and lands other than mining claims. Ore or solutions of locatable minerals may be commingled with ores or solutions from lands other than mining claims: Provided, That the operator shall first sample, weigh or measure, and assay the same in accordance with accepted industry standards. In the event of such production from mines comprised of mining claims and other lands and/or in the event of commingling as provided under this paragraph, Gross Yield, allowable costs and Net Proceeds for royalty purposes shall be allocated in proportion to mineral products recovered from the mining claims in accordance with accepted industry standards.

((d) Liability for Royalty Payments.--The owner or co-owners of a mining claim subject to the royalty required under this section shall be liable for royalty due to the United States on locatable minerals produced and sold during the period of ownership to the extent of the interest in such claim owned. As used in this subsection, "owner" or "co-owner" shall mean the person or persons owning the right to mine locatable minerals from such claim and receiving the Net Proceeds of such sale. Any person who makes any royalty payment attributable to the interest of the owner or co-owners liable therefor shall not become liable to the United States for such royalty as a result of making such payment on behalf of such owner or co-owners.

(e) Time and Manner of Payment.--

(1) Royalty payments for production from any mining claim subject to the royalty required in this section shall be due to the United States at the end of the month following the end of the calendar quarter in which the Net Proceeds from the sale of such production are received by the owner or co-owners. Royalty payments may be made based upon good faith estimates of the Gross Yield, Net Proceeds and the quantity of ore, concentrates, or other beneficiated or fabricated products of locatable minerals, subject to adjustment when the actual annual Gross Yield, Net Proceeds and quantity are determined by the owner of the mining claim or site or co-owners.

(2) Each royalty payment or adjustment shall be accompanied by a statement containing--

(A) the name and Bureau of Land Management serial number of the mining claim or claims from which ores, concentrates, solutions or beneficiated products of locatable minerals subject to the royalty required in this section were produced and sold for the period covered by such payment or adjustment;

(B) the estimated (or actual, if determined) quantity of such ore, concentrates, solutions or beneficiated or fabricated products produced and sold from such mining claim or claims for such period;

(C) the estimated (or actual, if determined) Gross Yield from the production and sale of such ore, concentrates, solutions or beneficiated products for such period;

(D) the estimated (or actual, if determined) Net proceeds from the production and sale of such ores, concentrates, solutions or beneficiated products for such period, including an itemization of the applicable deductions described in paragraph (b)(2); and

(E) the estimated (or actual, if determined) royalty due to the United States, or adjustment due to the United States or such owner or co-owners, for such period.

(3) In lieu of receiving a refund under subsection (g), the owner of co-owners may elect to apply any adjustment due to such owner or co-owners as an offset against royalties due from such owner or co-owners to the United States under this Act, regardless of whether such royalties are due for production and sale from the same mining claim or claims.

(f) Recordkeeping and Reporting Requirements.--

(1) An owner, operator, or other person directly involved in the conduct of mineral activities, transportation, purchase, or sale of locatable minerals, concentrates, or products derived therefrom, subject to the royalty required in this section, through the point of royalty computation, shall establish and maintain any records, make any reports, and provide any information that the Secretary may reasonably require for the purposes of implementing this section or determining compliance with regulations or orders under this section. Upon the request of the Secretary when conducting an audit or investigation pursuant to subsection (h), the appropriate records, reports, or information which may be required by this section shall be made available for inspection and duplication by the Secretary.

(2) Records required by the Secretary under this section shall be maintained for three years after the records are generated unless the Secretary notifies the record holder that he or she has initiated an audit or investigation specifically identifying and involving such records and that such records must be maintained for a longer period. When an audit or investigation is under way, such records shall be maintained until the earlier of the date that the Secretary releases the record holder of the obligation to maintain such records or the date that the limitations period applicable to such audit or investigation under subsection (h) expires.

(g) Interest Assessments.--In any case in which royalty payments are not received by the Secretary on the date that such payments are due, or when such payments are less than the amount due, the Secretary shall charge interest on such late payments computed at the rate published by the Department of the Treasury as the "Treasury Current Value of Funds Rate." In the case of an underpayment or partial payment, interest shall be computed and charged only on the amount of the deficiency and not on the total amount,

and only for the number of days such payment is late. No other late payment or underpayment charge or penalty shall be charged. In any case in which royalty payments are made in excess of the amount due, or amounts are held by the Secretary pending the outcome of any appeal in which the Secretary does not prevail, the Secretary shall promptly refund such overpayments or pay such amounts to the person or persons entitled thereto, together with interest thereon for the number of days such overpayment or amounts were held by the Secretary, with the addition of interest charged against the United States computed at the rate published by the Department of the Treasury as the "Treasury Current Value of Funds Rate."

(h) Audits, Payment Demands and Limitations.--

(1) The Secretary may conduct, after notice, any audit reasonably necessary and appropriate to verify the payments required under this section.

(2) Any billing or demand letter for royalty due on locatable minerals produced and sold from any mining claim subject to royalty required by this section must be sent or issued not later than three years after the date such royalty was due and must specifically identify the production involved, the royalty allegedly due and the basis for the claim. No action, proceeding or claim for royalty due on locatable minerals produced and sold, or relating to such production, may be brought by the United States, including but not limited to any claim for additional royalties or claim of the right to offset the amount of such additional royalties against amounts owed to any person by the United States, unless judicial suit or administrative proceedings are commenced to recover specific amounts claimed to be due prior to the expiration of three years from the date such royalty is alleged to have been due.

(i) Transitional Rules.--Any mining claim for which a patent is issued pursuant to subsection 204(b) shall not be subject to the obligation to pay the royalty pursuant to this section. Royalty payments for any claim processed under subsection 204(b) shall be suspended pending final determination of the right to patent. For any claim that does not qualify for the issuance of a patent under subsection 204(b), royalties shall be payable under this section on--

(1) previous production between the date of enactment of this Act and the date of such final decision denying the issuance of a patent, plus interest computed at the rate published by the Department of the Treasury as the "Treasury Current Value of Funds Rate"; and

(2) production subsequent to the date of such decision.

(j) Disbursement of Revenues.--The receipts from royalties collected under this section shall be disbursed as follows:

(1) One-third of such receipts shall be paid onto the Treasury of the United States and deposited as miscellaneous receipts.

(2) One-third of such receipts shall be paid by the Secretary of the Treasury to the State in which the mining claim from which production occurred is located.

(3) One-third of such receipts shall be paid into a State Fund or the Federal Fund in accordance with Title V; until termination as provided in section 506.

(k) No Implied Covenants.--The owner of a mining claim subject to the provisions of this title shall have no obligation, express or implied, to explore for, develop, produce or market locatable minerals as a result of the obligation to pay royalty hereunder, and the timing, nature, extent and manner of exploring, developing, mining and marketing such locatable minerals shall be in the sole discretion of the claim owner.

TITLE V--ABANDONED LOCATABLE MINERALS MINE RECLAMATION PROGRAM

SEC. 501. ABANDONED LOCATABLE MINERALS MINE RECLAMATION FUND.

(a) State Fund.--Any State within which proceeds are collected pursuant to title IV from a mining claim and which wishes to become eligible to receive such proceeds allocated by paragraph 401(j)(3) shall establish and maintain an interest-bearing abandoned locatable mineral mine reclamation fund (hereinafter referred to in this Title as "State Fund") to accomplish the purposes of this title.

(b) Federal Fund.--There is established on the books of the Treasury of the United States an interest-bearing fund to be known as the Abandoned Locatable Minerals Mine Reclamation Fund (hereinafter referred to in this title as "Federal Fund") which shall consist of proceeds allocated by paragraph 401(j)(3) from mining claims in a State where a State Fund has not been established or maintained under subsection (a).

SEC. 502. ALLOCATION AND PAYMENTS.

(a) State Fund.--Proceeds collected pursuant to title IV and allocated by paragraph 401(j)(3) shall be paid by the Secretary of the Treasury to the State Fund established pursuant to subsection 501(a) for the State where the mining claim from which the production occurred is located. Payments to States under this subsection with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary of the Interior as having been received, except for any portion of such moneys which is under challenge, which shall be placed in a suspense account pending resolution of such challenge. Such warrants shall be issued by the United States Treasury not later than ten days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be due the United States shall be payable to a State Fund not later than fifteen days after such challenge is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the challenge is resolved. In determining the amount of payments to State Funds under this section, the amount of such payments shall not be reduced by any administrative or other costs incurred by the United States.

(b) Federal Fund.--Proceeds collected pursuant to title IV, and allocated by paragraph 401(j)(3), from mining claims located in a State which has not established or maintained a State Fund, and such proceeds from mining claims located in a State for which the Secretary's authority has expired under subsection 506(a), shall be credited to the Federal Fund and distributed in accordance with subsection (c).

(c) Transition.--Prior to the time a State establishes a State Fund pursuant to subsection 501(a), any proceeds collected from a mining claim within such State shall be deposited into the Federal Fund and allocated to such State. Once a State establishes a State Fund under subsection 501(a), the State allocation in the Federal Fund with accrued interest shall be paid by the Secretary of the Treasury to the State Fund in accordance with subsection (a). Commencing three years after the date of enactment of this Act, the Secretary of the Treasury shall distribute proceeds then accrued or which are thereafter credited to the Federal Fund equally among all States which maintain a State Fund established under subsection 501(a), and for which the Secretary of the Treasury's authority has not expired under subsection 506(a).

SEC. 503. ELIGIBLE AREA.

(a) In General.--Subject to subsection (b), lands and water eligible for reclamation under this title shall be Federal lands that--

(1) have been adversely affected by past mineral activities on lands abandoned and left inadequately reclaimed prior to the date of enactment of this Act; and

(2) for which the State determines there is no identifiable party with a continuing reclamation responsibility under State or Federal laws.

(b) Specific Sites and Areas Not Eligible.--The following areas shall not be eligible for expenditures from a State Fund:

(1) Any area subject to a plan of operations submitted or approved prior to, on or after the date of enactment of this Act which includes remaining or reclamation of the area adversely affected by past locatable mineral activities.

(2) Any area affected by coal mining eligible for reclamation expenditures pursuant to section 474 of the Surface Mining Control and Reclamation Act (30 U.S.C. 1234);

(3) Any area designated for remedial action pursuant to the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7912).

(4) Any area that was listed on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9605) prior to the date of enactment of this Act, or where the Environmental Protection Agency has initiated or caused to be initiated a response action pursuant to that Act.

SEC. 504. USES AND OBJECTIVES OF FUNDS.

(a) Use of Funds.--Moneys in a State Fund shall be used for the reclamation of eligible areas. For purposes of this section, reclamation includes--

(1) backfilling, fencing, sealing, or otherwise controlling abandoned underground mine entries to protect public health and safety;

(2) abatement, treatment or control of water pollution;

(3) shaping, grading, contouring and revegetation of land to prevent erosion and sedimentation, or to enhance fish and wildlife habitat;

(4) removal or control of toxic or hazardous materials;

(5) analysis, curation and preservation of structures, buildings, sites or objects listed or eligible for listing pursuant to the National Historic Preservation Act (16 U.S.C. 470a); and

(6) control or reclamation of surface subsidence due to abandoned underground mines.

(b) Priorities.--Expenditures of moneys from a State Fund shall reflect the following priorities in the order stated, but shall not preclude, where feasible and appropriate, a combination of these priorities for cost-effective reclamation:

(1) The protection of public health, safety, general welfare and property from extreme danger from the adverse effects of past mineral activities.

(2) The protection of public health, safety, and general welfare from the adverse effects of past mineral activities.

(c) Liability.--No State, or a contractor for such State engaged in approved reclamation work under this title, or any other entity authorized by a State to conduct approved reclamation activities, shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out reclamation pursuant to this section. This subsection shall not preclude liability for costs and damages as result of gross negligence or intentional misconduct. For purposes of the preceding sentence, reckless, willful or wanton misconduct shall constitute gross negligence.

SEC. 505. REPORT TO CONGRESS.

Each year, each State with a State Fund under subsection 501(a) shall submit a report to the Congress providing an accounting of the Fund, including identifying sites for which moneys in the Fund have been spent during the preceding year and sites for which moneys shall be allocated in the following year, the amounts spent or expected to be spent on each such site, and an estimate of the number of eligible areas that remain to be reclaimed in the State.

SEC. 506. SUNSET PROVISIONS.

(a) Termination of Authority.--The Secretary of the Treasury's authority to allocate funds to a State Fund under section 502 shall expire on the date that the State submits an annual report to the Congress pursuant to section 505 which reports that there are no areas in the State which remain to be reclaimed.

(b) Termination of Fund.--Upon the termination of authority as provided in subsection (a) with respect to all State Funds, the Federal Fund shall also be terminated, and all proceeds thereafter remaining in the Federal Fund shall be paid into the Treasury of the United States and deposited as miscellaneous receipts.

TITLE VI--ADMINISTRATIVE PROVISIONS

SEC. 601. EFFECTIVE DATE.

The provisions of this Act shall take effect on the date of enactment of this Act, except as otherwise provided in this Act.

SEC. 602. EFFECT ON FEDERAL AND STATE LAWS.

(a) Effect on the General Mining Laws.--The provisions of this Act shall supersede the general mining laws only to the extent such laws conflict with the requirements of this Act. Where no such conflict exists, the general mining laws, including all judicial and administrative decisions interpreting them, shall remain in full force and effect.

(b) Effect on Other Federal and State Laws.--Except as provided in subsection (a), nothing in this Act shall be construed--

(1) as superseding, modifying, amending or repealing any other provision of Federal law, State law or Federal or State regulation enacted pursuant thereto, not expressly superseded, modified, amended or repealed;

(2) without limiting the foregoing, as affecting or intended to affect or in any way interfere with or modify the laws of the States relating to the ownership, control, appropriation, use and distribution of ground or surface waters or the regulation by States of surface or ground water quality; and

(3) as affecting or modifying in any way the rights, obligations or liabilities of any person under other provision of law.

SEC. 604. SEVERABILITY.

If any provision of this Act or the applicability thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

LEGI-SLATE Report for the 104th Congress Wed, February 14, 1996 3:21pm (EST)

BILL TEXT Report for H.R.1580
As introduced in the House, May 9, 1995

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H.R.1580 As introduced in the House, May 9, 1995

I

104th CONGRESS
1st Session

H. R. 1580

To amend the general mining laws to provide a reasonable royalty from mineral activities on Federal lands, to specify reclamation requirements for mineral activities on Federal lands, to create a State program for the reclamation of abandoned hard rock mining sites on Federal lands, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

May 9, 1995

Mr. Young of Alaska (for himself, Mr. Calvert, Mr. Orton, Mrs. Vucanovich, Mr. Cremeans, Mr. Hayworth, Mr. Stump, Mr. Skeen, Mr. Crapo, Mr. Emerson, and Mr. Shadegg) introduced the following bill; which was referred to the Committee on Resources

A BILL

To amend the general mining laws to provide a reasonable royalty from mineral activities on Federal lands, to specify reclamation requirements for mineral activities on Federal lands, to create a State program for the reclamation of abandoned hard rock mining sites on Federal lands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Mining Law Reform Act of 1995".

TITLE I--FINDINGS AND PURPOSE; DEFINITIONS

SEC. 101. FINDINGS AND PURPOSE.

(a) Findings.--Congress finds and declares that--

(1) a secure and reliable supply of locatable minerals is essential to the industrial base of the United States, national security, and balance of trade;

(2) many of the deposits of locatable minerals that may be commercially developed are on Federal lands as that term is defined in this Act, and are difficult and expensive to discover, mine, extract and process;

(3) the national need for locatable minerals will continue to expand, and without a strong mining industry the demand for the minerals will exceed domestic sources of supply;

(4) mining of locatable minerals is an extremely high-risk, capital-intensive endeavor, which, to attract necessary investment, requires certainty and predictability in access to Federal lands in establishment of mining titles, and in the rights of owners of mining claims or sites to develop minerals;

(5) it is the national interest to foster and encourage private enterprise in the development of a domestic minerals industry to maintain and create high-paying jobs and the various Federal, State, and local taxes paid by the mining industry in the United States;

(6) the diversity in terrain, climate, biological, chemical, and other physical conditions, and variation among the locatable minerals mined and the methods of mining and processing, require that reclamation standards be tailored to local and regional conditions;

(7) there are extensive Federal and State environmental standards that apply to mining operations on Federal lands, including State programs for the protection of ground water quality;

(8) every State containing Federal lands has enacted laws and regulations governing the reclamation of mined lands and, subject to the supremacy clause of the United States Constitution, these laws and regulations, including financial assurance requirements, apply to mineral activities on Federal lands;

(9) changes in the general mining laws of the United States to provide more direct economic return to the United States and greater protection of public resources are desirable, so long as the changes do not act as a disincentive to development of minerals, adversely affect employment in the mining industry or in industries that provide goods and

services required for mining activities, interfere with a secure and reliable domestic supply of minerals, or adversely affect the balance of trade of the United States; and

(10) mining claims, mill sites and tunnel sites located under the general mining laws are property interests, and any law or regulation that impairs existing property rights may expose the Federal Government to takings claims under the fifth amendment to the United States Constitution.

(b) Purpose.--It is the purpose of this Act to--

(1) promote exploration for and the development of a secure and reliable domestic source of locatable minerals;

(2) provide for increased Federal revenue from the location and production of locatable minerals from Federal lands through fees, patent payments and royalties;

(3) ensure that mineral activities on Federal lands are conducted in compliance with all applicable Federal and State environmental regulations and standards, including standards governing mind land reclamation;

(4) ensure that all Federal lands affected by mineral activities under the general mining laws are reclaimed as required by applicable laws;

(5) establish a program to reclaim abandoned locatable mine sites on Federal lands; and

(6) recognize that unpatented mining claims, mill sites and tunnel sites are property rights in the fullest sense and avoid, to the greatest extent possible, claims of takings of existing property rights under the general mining laws that could require compensation under the fifth amendment to the United States Constitution.

SEC. 102. DEFINITIONS.

When used in this Act:

(1) "Assessment year" means the annual period commencing at 12 o'clock noon on the 1st day of September and ending at 12 o'clock noon on the 1st day of September of the following year.

(2) "Federal lands" means, except as provided otherwise in title III, lands and interest in lands owned by the United States that are open to mineral location, or that were open to mineral location when a mining claim or site was located and which have not been patented under the general mining laws.

(3) "General mining laws" means those Acts which generally comprise chapters 2, 11, 12, 12A, 15, and 16, and sections 161 and 162, of title 30 of the United States Code, all Acts heretofore enacted which are amendatory of or supplementary to any of the foregoing Acts, and the

judicial and administrative decisions interpreting such Acts.

(4) "Locatable minerals" means those minerals owned by the United States and subject to location and disposition under the general minerals laws on or after the effective date of this Act, but not including any mineral held in trust by the United States for any Indian or Indian tribe, as defined in section 2 of the Indian Mineral Development Act of 1982 (25 U.S.C. 2101), or any mineral owned by any Indian or Indian tribe, as defined in that section, that is subject to a restriction against alienation imposed by the United States, or any mineral owned by any incorporated Native group, village corporation, or regional corporation and acquired by the group or corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(5) "Mineral activities" means any activity on Federal lands related to, or incidental to, exploration for or development, mining, production, beneficiation, or processing of any locatable mineral, or reclamation of the impacts of such activities.

(6) "Mining claim or site", except where provided otherwise, means a lode mining claim, placer mining claim, mill site or tunnel site.

(7) "Operator" means any person conducting mineral activities subject to this Act.

(8) "Person" means an individual, Indian tribe, partnership, association, society, joint venture, joint stock company, firm, company, limited liability company, corporation, cooperative or other organization, and any instrumentality of State or local government, including any publicly owned utility or publicly owned corporation of State or local government.

(9) "Secretary" means (i) in titles II and V, the Secretary of the Interior acting through the Bureau of Land Management, (ii) in title IV, the Secretary of Interior acting through the Bureau of Land Management or the Minerals Management Service, or both, and (iii) elsewhere in this Act, the Secretary of Agriculture, acting through the Forest Service, with respect to lands under the jurisdiction of the Secretary of Agriculture, and the Secretary of the Interior, acting through the Bureau of Land Management, with respect to all other land subject to the requirements of this Act.

TITLE II--DISPOSITION OF LOCATABLE MINERAL DEPOSITS

SEC. 201. CLAIM MAINTENANCE REQUIREMENTS.

(a) Maintenance Fee.--After the date of enactment of this Act, the owner of each unpatented mining claim or site located pursuant to the general mining laws, whether located before or after the enactment of this Act, shall pay in advance to the Secretary annually on or before September 1, and until a patent has been issued therefor, a maintenance fee of \$100 per mining claim or site. The owner of each unpatented mining claim or site located after the date of enactment of this Act pursuant to the general mining laws shall pay to the Secretary, at the time the copy of the notice or certificate of

location is filed with the Bureau of Land Management pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(b)), in addition to the location fee required under subsection (f) of this section, an initial maintenance fee of \$100 per mining claim or site for the assessment year which includes the date of location of such mining claim or site. If a mining claim or site is located within 90 days before September 1 and the copy of the notice or certificate of location is timely filed with the Bureau of Land Management under subsection 314(b) of the Federal Land Policy and Management Act of 1976 after September 1, the annual maintenance fee payable under the first sentence of this subsection shall be paid at the time such notice or certificate of location is filed, in addition to the location fee and the initial \$100 maintenance fee. No maintenance fee shall be required if the fee is waived or the owner of the mining claim or site is exempt as provided in section 202 of this Act.

(b) Assessment Work Requirements.--

(1) For the first five assessment years following the assessment year which includes the date of location of any unpatented mining claim or site located on or after the date of enactment of this Act, or for the first five assessment years following the assessment year which includes the date of enactment of this Act for any unpatented mining claim or site located before the date of enactment, the annual maintenance fee under subsection (a) of this section shall be in lieu of the assessment work requirements of the general mining laws and of any other Federal law. Beginning with the sixth assessment year following the assessment year which includes such date of location or enactment, such assessment work requirements shall apply in addition to such annual maintenance fee, subject to any suspension or deferment of annual assessment work provided by law.

(2)(A) Section 1 of the Act of September 2, 1958 (30 U.S.C. 28-1), is amended by inserting "mineral activities, environmental baseline monitoring, and" after "without being limited to" and before "geological, geochemical and geophysical surveys".

(B) Section 2(d) of the Act of September 2, 1958 (30 U.S.C. 28-2(d)), is amended by inserting "environmental baseline monitoring or" after "experience to conduct" and before "geological, geochemical or geophysical surveys".

(C) Section 2 of the Act of September 2, 1958 (30 U.S.C. 28-2), is amended by adding at the end of the following new subsection:

"(e) The term 'environmental baseline monitoring' means activities for collecting, reviewing and analyzing information concerning soil, vegetation, wildlife, mineral, air, water, cultural, historical, archeological or other resources related to planning for or complying with Federal and State environmental or permitting requirements applicable to potential or proposed mineral activities on the claim(s)."

(c) Maintenance Fee Statement.--Each payment under subsection (a) of this section shall be accompanied by a statement which reasonably identifies the mining claim or site for which the maintenance fee is being paid. Such statement may include the name of the mining claim or site, the serial number assigned by the Secretary to such mining claim or site, the description of

the book and page in which the notice or certificate of location for such mining claim or site is recorded under State law, any combination of the foregoing, or any other information that reasonably identifies the mining claim or site for which the maintenance fee is being paid. The statement required under this subsection shall be in lieu of any annual filing requirements for mining claims or sites, under any other Federal law, but shall not supersede any such filing requirement under applicable State law.

(d) Effect of Compliance as Against Subsequent Locators.--

(1) Except as provided in paragraph (d)(2) of this subsection, after the date of enactment of this Act, compliance with the requirements of this section and sections 202 and 203 shall, from the time the location notice or certificate is posted on the land under applicable State law, confer upon the owner of any unpatented mining claim or site, whether located before or after the date of enactment of this Act, an exclusive right of possession, as against subsequent locators, of the land included in such mining claim or site for the purposes described in subsection 203(a). If more than one mining claim or site owned or controlled by the same claim or site owner covers substantially the same land, by reason of the location of one or more mining claims or sites on such land, the amendment or relocation of any such mining claim or site, or otherwise, such exclusive right of possession shall extend to all such mining claims or sites, effective from the time the location notice or certificate for the initial mining claim or site was posted on such land under applicable State law. The order of location, amendment, or relocation of any such mining claims or sites on such land shall not affect the validity of any such mining claim or site. Such owner of the mining claim or site shall not be required to be in actual, physical occupation of such land and shall not be required to exclude rival locators from such land. Such exclusive right of possession shall be subject to applicable Federal law, including the Multiple Mineral Development Act of 1954 (30 U.S.C. 521-31), the Materials Act of 1947 (30 U.S.C. 601-604) and the Surface Resources Act of 1955 (30 U.S.C. 611-15) to the extent applicable, and shall neither enlarge nor diminish any rights of such owner of the mining claim or site as against the United States in such land. This paragraph shall supersede the common law doctrine of pedis possessio.

(2) Conflicts over the right of exclusive possession of land included in any mining claim or site shall be determined in proceedings between owners of mining claims or sites under the provisions of section 910 of the Revised Statutes (30 U.S.C. 53) and other applicable law, including but not limited to the following:

(A) Any conflict based upon circumstances existing as of the date of enactment of this Act between mining claims or sites located before the date of enactment of this Act, which shall be resolved under the law in effect on the day prior to the date of enactment of this Act, including the common law doctrine of pedis possessio.

(B) Any conflict arising on or after the date of enactment of this Act between mining claims or sites located before, on or after the date of enactment over whether either owner of the mining claim or site has complied with the requirements of this section or sections 202 or 203(a), which shall be resolved under this Act.

(e) Failure of Co-Owner To Contribute.--Upon the failure of any one or more of several co-owners of any mining claim or site to contribute such co-owner or owners' portion of the location or maintenance fee under this section, any co-owner who has paid such fee may, after the payment due date, serve the delinquent co-owner or owners with notice of such failure in writing or, if such delinquent co-owner or owners cannot be located after reasonable efforts, by publication in a general circulation newspaper published in a location nearest the mining claim or site at least once a week for at least 90 days. If at the expiration of 90 days after such notice in writing or by publication, any delinquent co-owner fails or refuses to contribute the owed portion, such co-owner or owners' interest shall become the property of the owner or co-owners who have paid the required fee.

(f) Location Fee.--The owner of each unpatented mining claim or site located on or after the date of enactment of this Act pursuant to the general mining laws shall pay to the Secretary, at the time the notice or certificate of location is filed with the Bureau of Land Management pursuant to subsection 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(b)), a location fee of \$25.00 per claim.

(g) Credit Against Royalty.--The annual claim maintenance fee paid for any unpatented mining claim or site on or before September 1 or any year shall be credited against the amount of royalty required to be paid under title IV for such mining claim or site during the following assessment year.

(h) Fee Adjustments and Disposition.--

(1) At the end of each period of five assessment years after the date of enactment of this Act, the Secretary shall adjust the maintenance fee and the location fee required by this section by an amount equal to the net adjustment in the implicit price deflator for the gross national product established by the United States Department of Commerce over the preceding five year period, rounded up or down to the nearest dollar.

(2) The Secretary shall provide owners of mining claims or sites with notice by publication in the Federal Register of any adjustment made under paragraph (1) not later than January 1 of any assessment year in which the adjustment is made.

(3) A fee adjustment under paragraph (1) shall apply to the payment due for the next assessment year after the assessment year in which notice is given under paragraph (2).

(4) All maintenance and location fees received by the Secretary under this section shall be paid into the Treasury of the United States and be subject to the provision of title I of Public Law 100-446, 102 Stat. 1774 (43 U.S.C. 1474) making receipts available for use by the Secretary for program operations in Mining Law Administration.

(i) Oil Shale Claims Subject to Claim Maintenance Fee Under Energy Policy Act of 1992.--This section shall not apply to any oil shale claims for which a fee is required to be paid under paragraph 2511(e)(2) of the Energy Policy Act of 1992 (30 U.S.C. 242(e)(2)).

(j) Failure To Comply.--The failure of the owner of the mining claim or site to pay the claim maintenance fee or location fee for a mining claim or site on or before the date such payment is due under subsection (a) or subsection (f) of this section shall constitute forfeiture of the mining claim or site and such mining claim or site shall be null and void, effective as of the day after the date such payment is due: Provided, however, That, if such maintenance fee or location fee is paid or tendered on or before the 30th day after such payment was due under subsection (a) or subsection (f) of this section, such mining claim or site shall not be forfeited or null or void, and such maintenance fee or location fee shall be deemed timely paid.

(k) Repeal of Omnibus Budget Reconciliation Act Fee Requirements.-- Sections 10101 through 10106 of the Omnibus Budget Reconciliation Act of 1993 (30 U.S.C. 28f through 28k) are hereby repealed.

(l) Conforming Amendment.--The third sentence of section 2321 of the Revised Statutes (30 U.S.C. 28) is amended by adding the words "Except as provided in paragraph 201(b)(1) of The Mining Law Reform Act of 1995," at the beginning of such sentence and deleting the words "that is granted a waiver under section 10101 of the Omnibus Budget Reconciliation Act of 1993,".

(m) Amendment of FLPMA Filing Requirements.--

(1) Section 314(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(a)) is hereby repealed.

(2) Section 314(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(c)) is amended to read as follows:

"(c) Failure to File as Constituting Forfeiture; Defective or Untimely Filing.--The failure to timely file the copy of the notice or certificate of location as required by subsection (b) shall constitute forfeiture of the mining claim and such claim shall be null and void by operation of law: Provided, however, That it shall not be considered a failure to file if the notice or certificate of location is defective or not timely filed for record under other State or Federal laws permitting or requiring the filing or recording thereof, or if the copy of the notice or certificate is filed by or on behalf of some but not all of the owners of the claim.".

SEC. 202. WAIVER AND EXEMPTION.

(a) Waiver of Fee.--The maintenance fee provided for in subsection 201(a) shall be waived for the owner of a mining claim or site who certifies in writing to the Secretary, on or before the date the payment is due, that, as of the date such payment is due, such owner and all related persons own not more than twenty-five unpatented mining claims or sites. Any owner of a mining claim or site that is not required to pay a maintenance fee under this subsection shall continue to be subject to the assessment work requirements of the general mining laws or of any other State or Federal law, subject to any suspension or deferment of annual assessment work provided by law, for the assessment year following the filing of the certification, and paragraph 201(b)(1) of this Act shall not apply.

(b) Related Persons.--As used in subsection (a), the term "related persons" includes--

(1) the spouse and dependent children (as defined in section 152 of the Internal Revenue Code of 1986), of the owner of the mining claim or site; and

(2) a person controlled by, controlling, or under common control with the owner of the mining claim or site.

(c) Exemption.--The owner of any mining claim or site who certifies in writing to the Secretary on or before the first day of any assessment year that access to such mining claim or site was denied or impeded during the prior assessment year by the action or inaction of any local, State, or Federal governmental officer, agency, or court, or by any Indian tribal authority, shall be exempt from the maintenance fee and assessment work requirements of subsections (a) and (b) of section 201 for the assessment year following the filing of the certification.

SEC. 203. GOOD FAITH REQUIREMENT; RESIDENTIAL OCCUPANCY; DIVESTMENT AND REVERTER.

(a) Good Faith Holding of Mining Claim or Site.--The location, maintenance, and use of an unpatented mining claim or site, whether located before or after enactment of this Act, shall be for the purpose of conducting mineral activities in good faith.

(b) Residential Occupancy.--The Secretary shall not prohibit residential occupancy of an unpatented mining claim or site and shall not require removal of equipment or facilities until mineral activities are completed, if such occupancy is shown in a notice of intent or plan of operations to be reasonably required to accomplish the mineral activities described therein.

(c) Reverter.--(1) Land patented under Section 204(a) shall revert to the United States if--

(A) the land is used for a purpose that is not authorized under subsection (a);

(B) the unauthorized use is not discontinued within a time period specified by the Secretary (but not earlier than 90 days after the Secretary provides the owner of the land with written notice pursuant to paragraph (2) to discontinue the unapproved use); and

(C) the Secretary elects to enforce the reversionary interest in accordance with paragraph (2).

(2) The reversion under paragraph (1) shall take effect if--

(A) the Secretary files a declaration of reversion in the office of the Bureau of Land Management designated by the Secretary of the Interior;

(B) the Secretary records the declaration in the office of the county recorder of the county in which the lands subject to a reversion are situated; and

(C) not later than 30 days after recording the declaration of reversion, the Secretary serves on the owner of the land subject to reversion a recorded copy of the declaration, the same manner that a summons and complaint are served under the Federal Rules of Civil Procedure, and delivers payment for fair market value of the surface interest at the time of the reverter.

(3) The Secretary may renounce a reversion by filing and recording a declaration of renouncement in the same offices in which a declaration of reversion would have been filed under paragraph (2). The Secretary may renounce a reversion for any reason, including a case in which--

(A) a portion of the lands included in the patent have been used for solid waste disposal or for any other purpose that may result in the disposal, placement, or release of a hazardous substance;

(B) continuance of the reverter serves no public purpose; or

(C) it would not be in the best interest of the United States to exercise the reverter.

(4) Each patent to land acquired under section 2325, 2333, or 2337 of the Revised Statutes (30 U.S.C. 29, 37 or 42) that is subject to the limitations of this subsection shall so state.

(d) Repeal of Patenting Moratorium; Processing of Patent Applications.--

(1) Sections 112 and 113 of Public Law 103-332 are hereby repealed. The Secretary shall diligently process all applications for patent and shall make determinations for all such applications regarding patent issuance as expeditiously as possible.

(2) The provisions of this Act shall not apply to any mining or mill site claim (A) for which a patent application was filed with the Secretary on or before May 9, 1995.

TITLE III--SURFACE MANAGEMENT OF MINERAL ACTIVITIES

SEC. 301. PURPOSE; APPLICABILITY; OPERATING AND RECLAMATION STANDARDS.

(a) Purpose.--It is the purpose of this title to provide for mineral entry, exploration, location and operations pursuant to the general mining laws in a manner that will not unduly hinder such activities or diminish rights, including but not limited to all statutory and common law rights of access, obtained under the general mining laws or other authorities, but will assure that such activities are conducted in a manner that will prevent unnecessary and undue degradation of nonmineral surface resources on Federal lands. Compliance with the provisions of this title shall constitute compliance with: (i) the final sentence of subsection 302(b) of the Federal Land Policy and Management Act (43 U.S.C. 1732(b)); and (ii) any standard

related to the management of surface resources within the National Forest System contained in or derived from the Organic Administration Act (16 U.S.C. 473 et seq.), the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1601 et seq.), or any other law applicable to Federal lands subject to this title within the National Forest System.

(b) Applicability.--This title shall apply only to mineral activities on those Federal lands where the surface estate is managed by the Bureau of Land Management or the United States Forest Service.

(c) Operations.--All mineral activities on Federal lands shall be conducted so as to prevent unnecessary and undue degradation of Federal lands by complying with applicable requirements of Federal and State environmental protection laws, including but not limited to--

- (1) the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);
- (2) the Clean Air Act (42 U.S.C. 7401 et seq.);
- (3) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);
- (4) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);
- (5) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);
- (6) the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.);
- (7) the Federal Water Pollution Control Act (commonly referred to as the "Clean Water Act") (33 U.S.C. 1251 et seq.);
- (8) the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.);
- (9) the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.);
- (10) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
- (11) the National Historic Preservation Act (16 U.S.C. 470 et seq.);
- (12) title XIV of the Public Health Service Act (commonly referred to as the "Safe Drinking Water Act") (42 U.S.C. 300f et seq.);
- (13) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);
- (14) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and
- (15) the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 et seq.).

(d) Reclamation.--In order to prevent unnecessary and undue degradation of surface resources, Federal land disturbed by mineral activities shall be reclaimed, to the extent economically and technically practicable, in compliance with the provisions of subsection 304(a).

(e) Designated Lands.--Where any mineral activities are to be conducted on Federal lands administered by the Bureau of Land Management or the Forest Service specifically designated by any special Act of Congress that applies a specific land management, resource protection or reclamation standard (such as wild and scenic rivers and designated wilderness) to such lands, such management or protection standard shall apply to the extent of any conflict with the provisions of this title.

SEC. 302. AUTHORIZATION FOR MINERAL ACTIVITIES.

(a) In General.--Except as otherwise provided in subsections (b) and (c) of this section, no person may engage in mineral activities on Federal lands unless that person has filed a plan of operations with, and received approval of the plan from, the Secretary in accordance with section 303.

(b) Notice Required.--

(1) A person may engage in mineral activities on Federal lands that cause only minor, short term, readily reclaimable impacts on surface resources, including but not limited to initial exploratory test hole drilling and road construction, only after filing with the Secretary a notice of intent to conduct such activities.

(2) Such notice shall include--

(A) the name and mailing address of the operator;

(B) when applicable, the name of the mining claim(s) or site(s), and serial number(s) assigned to the mining claims(s) or site(s) on which mineral activities are proposed;

(C) a statement describing the activities proposed and their location in sufficient detail to locate the operations on the ground, and giving the approximate date when activities will begin. The statement shall include a description and the location of any access routes to be constructed or improved and the type of equipment to be used in their construction;

(D) a statement that reclamation of all areas will be completed as required by subsection 301(d), and that mineral activities will comply with the operations standard as required by subsection 301(c); and

(E) evidence of financial assurance as required by section 306.

(3) Failure of the operator to conduct mineral activities in conformance with the notice and the requirements of this title may cause the operator to be subject to enforcement pursuant to section 308.

(4) The Secretary shall review the notice within 30 days of receipt. If the Secretary determines that the proposed mineral activities will, or are likely to cause more than minor, short term, readily reclaimable impacts on surface resources, the Secretary shall provide a statement of reasons explaining why the mineral activities cannot proceed under notice and shall require in writing that the operator submit a proposed plan of operations in accordance with the requirements of this section. Failure of the Secretary to respond in writing within 30 days of receipt of the notice shall be deemed to be approval of the mineral activities proposed in the notice.

(5) The Secretary shall establish by regulation from time to time additional categories of mineral activities which may be conducted under notice based on the amount of surface to be disturbed, the type of equipment to be used, the time required for reclamation, and other relevant factors.

(c) Other Mineral Activities.--Notwithstanding the provisions of subsections (a) and (b), any person may conduct mineral activities on Federal lands which cause only a minimal disturbance of surface resources, including but not limited to claim location; exploration; geological, geophysical or geochemical surveys; environmental baseline monitoring; activities related to the gathering of data related to the preparation or analysis of a notice or plan of operations under this title, or required under any other applicable Federal or State environmental law or regulation; and other activities designated by the Secretary, without filing a notice or plan of operations with the Secretary.

(d) Transfer of Rights.--An operator may transfer, assign or sell any rights associated with a notice without approval by the Secretary: Provided, That the successor in interest agrees in writing to assume the liabilities and reclamation responsibilities established under subsection (b) and provide evidence of financial assurance as required under section 306. The transfer, assignment or sale shall not become effective prior to the filing of such writing and evidence of financial assurance with the Secretary. The financial assurance of the transferee shall be substituted for the assurance previously submitted by the transferor and the financial assurance of the transferor shall be fully released.

SEC. 303. PLAN OF OPERATIONS; CONTENT, REVIEW AND APPROVAL.

(a) Plan of Operations Requirements.--A plan of operations required under this title shall contain--

(1) the name and mailing address of the operator;

(2) when applicable, the name of the mining claim(s) or site(s), and serial number(s) assigned to the mining claim(s) or site(s) on which mineral activities are proposed;

(3) a general description of the mineral activities proposed, including the anticipated periods during which the proposed mineral activities will occur;

(4) a map showing existing and/or proposed routes of surface access, or other means of access, and identifying areas where surface disturbance will occur;

(5) information describing the land and water resources of the area expected to be disturbed by the proposed mineral activities and any proposed mitigation measures necessary to comply with the requirements of this title;

(6) a reclamation plan which includes proposed measures to reclaim Federal lands disturbed by the proposed mineral activities as required under subsection 301(d);

(7) evidence of adequate financial assurance as required under section 306; and

(8) a monitoring plan to assure compliance with the requirements of the plan of operations.

(b) Plan of Operations Review.--A proposed plan of operations shall be submitted to the Secretary, who shall promptly acknowledge receipt thereof to the operator. The Secretary shall promptly review the proposed plan of operations and shall notify the operator within 30 days--

(1) that the plan of operations has been approved as submitted;

(2) of all changes in, or additions to the proposed plan of operations necessary to comply with the requirements of this title; or

(3) that a specified reasonable amount of time is necessary to complete the review, setting forth the circumstances which justify the additional time.

(c) Mineral Activities Pending Review.--Any operator who has submitted a plan of operations under this section may continue to conduct mineral activities otherwise authorized pursuant to subsections (b) and (c) of section 302 within the geographic area covered by the proposed plan of operations pending its approval.

(d) Plan of Operations Approval.--(1) The Secretary shall approve a proposed plan of operations within a reasonable period of time if--

(A) the proposed plan of operations substantially complies with the requirements of this title; and

(B) the applicant has complied with the requirements of section 306 concerning financial assurance.

(2) If, after review, the Secretary determines that a proposed plan of operations will not substantially comply with the requirements of this title, the Secretary shall specify all deficiencies in the proposed plan, shall request the operator to modify the proposed plan to comply with the requirements of this title and shall specify all necessary modifications to the proposed plan.

(e) Modifications to an Approved Plan of Operations.--

(1) Minor modifications.--At any time during which mineral activities are being conducted under an approved plan of operations, an operator may make minor modifications to the approved plan of operations by notifying the Secretary. Failure of the Secretary to respond in writing within 30 days of receipt of the proposed minor modification shall be deemed to be approval of the minor modification. For purposes of this title, a "minor modification" is a change to the approved plan of operations that is not likely to result in significant impacts to surface resources different from those previously considered in the approved plan of operations.

(2) Review of minor modifications.--If the Secretary determines that a proposed minor modification may be significant, the Secretary shall provide a statement of reasons and may require the operator to submit a significant modification to the plan of operations pursuant to paragraph (3) of this subsection.

(3) Significant modification.--At any time during activities under an approved plan of operations, the operator may propose a significant modification to the approved plan of operations. A significant modification must be submitted, reviewed and approved in the same manner as a plan of operations under this section, except that the modification need not include information required under subsection 303(a) if the modification requires no change to such information: Provided, however, That approval of such modification shall neither require nor be denied or conditioned upon retrofit, redesign, reconstruction, closure or change in the operation of any facility, structure or mineral activity previously approved. For purposes of this title, a "significant modification" is a change to the approved plan of operations which is likely to result in significant impacts to surface resources different from those previously considered in the approved plan of operations.

(4) Request by secretary.--At any time during which mineral activities are being conducted under an approved plan of operations, the Secretary may request that an operator submit a modification to the approved plan of operations together with a written determination that such modification is necessary to prevent unnecessary and undue degradation of Federal lands as required by section 301. The Secretary's determination that a modification is necessary shall be subject to notice to the operator and a right to a hearing at the request of the operator. If the Secretary has requested a modification under this paragraph, mineral activities may continue in accordance with the approved plan of operations until the modification is submitted, reviewed, and approved.

(f) Term.--An approved plan of operations shall remain in effect as approved until the mineral activities subject to the approved plan of operations are completed or until the plan of operations is modified.

(g) Transfer of Rights.--An operator may transfer, assign, or sell any rights associated with an approved plan of operations without approval by the Secretary: Provided, That the successor in interest agrees in writing to assume the liabilities and reclamation responsibilities established by the approved plan of operations and provide evidence of financial assurance as required under section 306. The transfer, assignment, or sale shall not become effective prior to the filing of such writing and evidence of

financial assurance with the Secretary. The financial assurance of the transferee shall be substituted for the assurance previously submitted by the transferor, and the financial assurance of the transferor shall be fully released.

SEC. 304. RECLAMATION PLAN.

A reclamation plan submitted with a proposed plan of operations pursuant to section 303 shall include appropriate measures to comply with substantive reclamation requirements of the State in which the proposed mineral activities will be located to the extent that those requirements are not in conflict with the purposes of the general mining laws and this Act, and the applicable provisions of State and Federal environmental protection laws, including those Federal laws listed in subsection 301(c). A proposed reclamation plan that complies with such State and Federal requirements shall be deemed sufficient to prevent unnecessary and undue degradation and to comply with subsection 301(d), and certification or other approval issued by a State or Federal agency of compliance with such laws shall be deemed compliance with this section.

SEC. 305. TRANSITION RULES.

(a) Applicability to Existing Operations.--Mineral activities for which an operator is authorized to proceed under notice or for which a plan of operations has been approved prior to the date of enactment of this Act shall continue under the terms and conditions of such notice or plan. Notices which were filed within 30 days of the effective date of enactment, and plans of operations which have been submitted before but not approved on the date of enactment of this Act, shall be reviewed based on the law existing on the day prior to the date of enactment of this Act. Significant modifications to approved plans of operations shall be submitted, reviewed, and approved pursuant to the applicable requirements of this title: Provided, however, That approval of such modifications shall neither require nor be conditioned upon retrofit, redesign, reconstruction or change in the operation of any facility, structure or mineral activity previously approved.

(b) Financial Assurance and Enforcement.--Notwithstanding the provisions of subsection (a), the enforcement provisions of section 308 shall apply to all mineral activities on the effective date of this Act and, within one year after the effective date of this Act, all operators operating under notice or a plan of operations shall submit to the Secretary evidence of adequate financial assurance as may be required under section 306.

SEC. 306. FINANCIAL ASSURANCE.

(a) Evidence of Financial Assurance.--(1) Prior to the commencement of any mineral activities requiring a plan of operations, an operator shall furnish evidence to the Secretary of a bond, surety, self-insurance or other financial assurance (including the use of bonding pools or a financial assurance instrument posted with a State or another Federal agency) in an amount sufficient to cover the reasonably estimated cost to complete reclamation as required by the plan of operations.