



# ALASKA

NORTH TO OPPORTUNITY

REPORT OF THE ALASKA MINERALS COMMISSION

JANUARY 2020



Independence Mine 2018

Mike Dunleavy, Governor  
State of Alaska

Julie Anderson, Commissioner  
Department of Commerce, Community,  
and Economic Development

Sandra Moller, Director  
Division of Community and  
Regional Affairs



## Alaska Minerals Commission

The 11-member Alaska Minerals Commission (AMC) serves in an advisory capacity to the Governor and the Alaska State Legislature. Five members are appointed by the Governor (one of whom must reside in a rural community), three members are appointed by the President of the Senate, and three members are appointed by the Speaker of the House of Representatives. The State of Alaska Division of Community and Regional Affairs supports the AMC by facilitating their annual meetings and assisting with the annual report.

The Commission's role is to recommend strategies to mitigate constraints on mineral development in Alaska. Created by the Legislature in 1986, the AMC's authorization was extended through 2024 by the Legislature in 2013 via House Bill 99. For over 30 years, the AMC has worked with the State and Legislature to successfully implement key recommendations that support a strong and sustainable Alaska minerals industry. This report builds upon past work with the intent to identify state and federal issues that can block responsible development.



Donlin Gold Project Site

## Commissioners

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**Bronk Jorgensen** (Chairman)  
Jorgensen Realty Mining Properties  
\*Rural Community Member

**Kyle Beebe**  
Coeur Mining

**James Fueg**  
The Pebble Partnership

**Willie Kasayulie**  
Calista Corporation

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Alaska Earth Sciences



Hecla Mining -Greens Creek Mine



Usibelli Coal Mine - Two Bull Ridge

# ALASKA

NORTH TO OPPORTUNITY

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## Introduction

Mining provides some of the building blocks of our society. The minerals industry provides critical components to pieces of technology we use every day, from cell phones and computers to clean technologies like electric vehicles and solar panels; and plays an important role in construction and electricity generation. In Alaska, the mining industry has demonstrated its ability to help diversify the economy and provide wide-ranging employment opportunities in both rural and urban areas, supporting rural infrastructure and lowering the cost of living, all while operating at the highest environmental standards.

Mining is an important component of the statewide five-year Comprehensive Economic Development Strategy (CEDS), developed in 2017 by the State of Alaska Division of Economic Development. Mining helps to create a diversified economy and a more stable fiscal environment in which all businesses can thrive. Increased minerals development and exploration in Alaska can help increase fiscal stability and economic development; helping to achieve Governor Dunleavy's priority to grow the state's economy and promote the "Alaska is Open for Business" initiative.

Alaska has five operating large hardrock mines, one large coal mine, and approximately 236 small placer mines<sup>[1]</sup>. Alaska's major mineral deposits currently in production include the Red Dog Mine in the Northwest Arctic region; Greens Creek and Kensington mines in the Southeast region; and Pogo Mine and Fort Knox Mine, both in the Interior region. Usibelli Coal Mine is the state's only active coal mine, providing coal for Interior Alaska power plants.

According to the McDowell Group<sup>[2]</sup>, together these operations provided 4,500 direct jobs in 2018, employing residents from throughout Alaska. In 2018, mining provided a total of 9,200 direct and indirect jobs, with a total direct and indirect payroll of \$715 million. Mining provides some of the highest paying jobs in the state with an annual average wage of \$102,100. In addition, \$34 million in local government revenue was attributed to mining activities through property taxes and payments in lieu of taxes. In 2018, the mining industry provided \$149 million in state government-related revenue through rents, royalties, fees, and taxes, and \$358 million in payments to Alaska Native corporations.

The mining industry pays an Alaska corporate income tax of up to 9.4 percent of income, which is the same for all corporations in the state. The mining industry also pays up to 7 percent of net profits as an additional mining license tax, which applies to all large mining operations regardless of land status, mineral ownership, or location. Mining operations on state land pay an additional 3 percent net profit royalty. Large mining operations are also significant taxpayers in their communities, paying property taxes in the Fairbanks and Juneau boroughs and a payment in lieu of taxes in the Northwest Arctic Borough.

The Alaska Minerals Commission commends state leadership on actions taken to improve the minerals exploration, development, and production climate in Alaska. The Alaska Minerals Commission presents this 2019 report with 12 priorities and corresponding recommendations.

<sup>[1]</sup> Athey, J.E., and Werdon, M.B. Alaska's Mineral Industry 2016: Alaska Division of Geological & Geophysical Surveys Special Report 72, 65 p. November 2017.

<sup>[2]</sup> Alaska Miners Association. The Economic Benefits of Alaska's Mineral Industry. The McDowell Group. January 2019

## Top Priority

### Continue to defend and promote the minerals and mining industry in Alaska.

Alaska is well-known for its excellent geologic potential, however the state's reputation as a hospitable location for investment has suffered in the past from inconsistent support for mineral resource development by state leadership. This appears to be slowly changing as Alaska is now ranked 3rd for mineral potential, assuming a "best practices" policy regime, and ranked 5th out of 83 jurisdictions internationally for mineral potential by mining and exploration companies. The mineral commission was especially pleased to see Governor Dunleavy and three of his Commissioners attend AME Roundup in Vancouver and visit with several major mining companies. This kind of attention coupled with continue support by State agencies for mineral exploration and development will increase attention and investment in Alaska.<sup>[1]</sup>

The Legislature and the Governor's administration should continue working together to ensure industry leaders in the United States, and around the world, know that mining and mineral development are welcome in Alaska. Clear, concise, and proactive communication is needed with regard to policy, land status and regulations. This will assure a level playing field for all businesses from prospectors, family miners, small mining companies to major mining companies, and large investors.

Increased investment in minerals exploration and mining is essential to diversify the state's economic underpinnings. "More than 190 million acres of Federal, State, and Native-owned lands are open for minerals-related activities and mining."<sup>[1]</sup> However, just having a resource isn't enough to bring outside business to Alaska. Attracting that investment requires that companies will have faith in the state's economic stability, reasonable regulatory environment, and ongoing support of the minerals industry at the highest levels of government.

### Recommendations:

The Alaska Minerals Commission recommends that the Governor's Administration and Legislature continue to create a shared message of welcoming investment in, and development of, Alaska's mineral resources that can be distributed to minerals and mining companies.

The Alaska Minerals Commission recommends continued increased outreach by the Alaska Department of Natural Resources Commissioner and the Governor's Administration to major mining companies and industry associations, describing the advantages of investing and exploring in Alaska and inviting these companies to explore and develop in the state.

The Alaska Mineral Commission thanks the Governor and his commissioners for attending AME Roundup in Vancouver for representing and promoting Alaska's Mineral resources.

The following state and federal priorities, coupled with actions recommended by this commission, support the open-door policy welcoming investment from all of Alaska's leadership.

### State Priorities:

1. Support for a statute change to modernize mineral tenure laws
2. Address key state regulations governing water use
3. Encourage the Governor's administration to continue challenging ballot initiatives that seek to regulate natural resource development
4. Support the Division of Geological & Geophysical Surveys (DGGS)
5. Reallocate portions of the state mining license tax to communities, while precluding targeted local severance taxes
6. Alaska Mapper Updates
7. Establish and maintain a stable state fiscal policy

### Federal Priorities:

1. Ensure the state defends Alaska's navigable waters and access corridors
2. USACE – General Permit Renewal
3. Continue lifting onerous public land orders (PLOs)
4. BLM Resource Management Plans (RMPs) must not violate the "no more clauses" in the Alaska National Interest Lands Conservation Act (ANILCA)
5. Support progress towards defining Waters of the US in accordance with the intent of the Clean Water Act

<sup>[1]</sup> Athey, Jennifer E., and Werdon, Melanie B., 2019, Alaska's Mineral Industry 2018: Alaska Division of Geological & Geophysical Surveys Special Report 74, p. 2

## State Priorities

### 1. Support for a statute change to modernize mineral tenure laws

This is now the Commission's number one state priority. The ability to establish and maintain secure mineral tenure is a cornerstone of the mining industry and is viewed as a prerequisite for investment anywhere in the world. Alaska mineral tenure laws were established prior to the advent of modern computer technology and databases. Over recent years problems with the system have emerged that impact both small and large miners and these are now contributing to a negative perception of mineral investment in Alaska and also having disproportionate impacts on small, locally owned, placer mining operations. Long-standing mining claims have been declared null and void because of minor clerical errors (which typically went undetected or were not considered an error prior to modern databases), currently interpreted as fatal flaws, on current and historical affidavits of labor and location certificates. A change in statute is required to allow miners to correct these errors without losing their claims.

Currently there are five steps miners are required to take each year to preserve their state mining claims: (1) pay rent to the Department of Natural Resources (DNR); (2) pay a royalty on removed minerals to the DNR; (3) file and pay state mining license taxes; (4) perform annual labor on held claims; and (5) record an affidavit of labor with the State District Recorder. Missing, or incorrectly performing, any of these steps results in statutory abandonment, or loss of the claim.<sup>[1]</sup>

Between noon on September 1 of each year and noon September 1 the following year, a minimum amount of work to benefit the claim— such as mining, exploration, or reclamation – must be performed on each claim, or on each contiguous claim block, to keep the claim in good standing under the annual labor requirement. This provision compels miners and explorers to either advance the mineral deposit or relinquish it so that successive claimants can do so. The amount of labor required varies according to the size of the claim, and excess work performed over the minimum requirement can be carried forward for up to four subsequent years. By November 30 of each year, an affidavit describing the labor or improvements must be recorded in the district where the claims are located. The affidavit of labor must include certain information required by statute, including name of the mining claim; every meridian, township, range, and section in which the claim is located; a description of the labor performed; the value of the labor performed; and more.<sup>[2]</sup>

While most requirements to maintain a claim are relatively straightforward, simple clerical errors – such as reversed numbers, a misplaced decimal, or an incorrect zip code – on the labor affidavit can result in statutory abandonment, and the miner can lose the claim. These types of errors can go unnoticed for years, and if a competing claimant overstakes the claim(s), the senior claim may be lost. Clerical errors that may have occurred decades ago have resulted in loss of claims, despite the miner or explorer performing the necessary labor, paying taxes and royalties to the state, and performing all other duties necessary to keep a claim in good standing. Some claim holders have restaked their own claims, at significant expense, to protect themselves from losing mineral rights. This type of regulatory uncertainty results in a chilling effect on mining investment, both large and small, as claim ownership can be disrupted by a historic paperwork error. Clarification and amendments to the statutory language are needed in the interests of justice, for the DNR to fairly and more efficiently manage mineral rights, and to maintain investor confidence in Alaska. During the last year, the Alaska Miners Association (AMA) has been working with DNR, the Governor's Office and members of the Legislature to create a bill to amend the statutes that control mining, exploration, and development of Alaska's mineral resources to address these issues.

### Recommendation:

The Minerals Commission recommends that the Legislature and the Governor amend the mining statutes to clarify the requirements for information that must be included in the affidavits of labor and to provide a mechanism that allows miners to correct errors in previously submitted affidavits of labor.



Hecla Mining - Greens Creek Mine

<sup>[1]</sup> Department of Natural Resources, accessed January 2019, Mineral Property Management, [dnr.alaska.gov/mlw/mining/min\\_prop.cfm](http://dnr.alaska.gov/mlw/mining/min_prop.cfm)

<sup>[2]</sup> Department of Natural Resources, 2018, Affidavit of Annual Labor for Mining, [dnr.alaska.gov/mlw/forms/mining/Affidavit-of-Annual-Labor-for-Mining-Form-and-Instructions-2018b.pdf](http://dnr.alaska.gov/mlw/forms/mining/Affidavit-of-Annual-Labor-for-Mining-Form-and-Instructions-2018b.pdf)

## 2. Address key state regulations governing water use - Tier 3 Waters

The State of Alaska is required by the Clean Water Act, and other federal regulations, to have an anti-degradation policy and a process for the nomination and designation of Tier 3 waters, also known as Outstanding National Resource Waters (ONRWs). The purpose of a Tier 3 designation is to offer special protection for waters of “exceptional recreational or ecological significance.” Designation of a Tier 3 waterbody results in a prohibition of any discharge that could degrade water quality, regardless of whether the discharge meets state water quality standards. This prohibition applies to discharges into tributaries or waterbodies upstream of the designated Tier 3 waters that could affect downstream waters, preventing industrial, municipal, or private activities that would require a water discharge permit.

There are currently no designated Tier 3 waters in the state, but the Alaska Department of Environmental Conservation (ADEC) has developed a process for the nomination and designation of Tier 3 waters. However, once waters are designated as Tier 3, there is no recognized process to remove that designation. “Currently, there is no precedent for removing an ONRW [designation] once in place; neither is there federal regulation or policy prohibiting such an action. ... However, in practice, once a water has been determined to be of exceptional significance warranting Tier 3 protection, it would be presumed to be extremely difficult to show at some time in the future that it is no longer exceptional and justify removal of the Tier 3 designation and protection level.”<sup>[1]</sup>

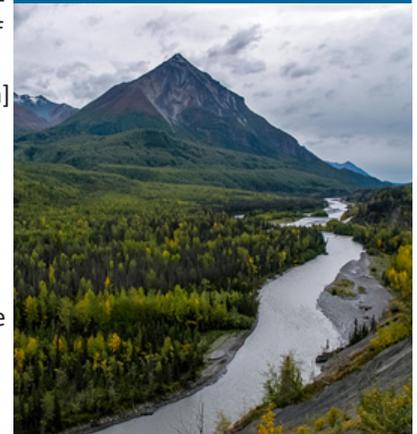
There is currently proposed legislation (Senate Bill 51/House Bill 138) before both houses of the Alaska Legislature to establish that Tier 3 designation authority resides with the Alaska Legislature.

### Recommendation:

The Alaska Minerals Commission recommends that the proposed legislation to establish that Tier 3 designation authority resides with the Alaska Legislature be passed during the 2020 legislative session. This will assure the most objective decision-making process for designation of Tier 3 waters.



Usibelli - Wishbone Hill  
Coal Mine



<sup>[1]</sup> Alaska Department of Environmental Conservation (ADEC) Division of Water, March 20, 2018, [dec.alaska.gov/media/4800/tier-3-factsheet-032018.pdf](http://dec.alaska.gov/media/4800/tier-3-factsheet-032018.pdf)

### 3. Encourage the Governor's administration to continue challenging ballot initiatives that seek to regulate natural resource development

Ballot initiative processes are intended to solve the problem (which can arise in democracies) of governmental action that is inconsistent with the will of the majority of citizens, and which cannot be resolved by elections of representation alone. A ballot initiative can bring about a public vote on a proposed statute or constitutional amendment if the petition receives a certain number of registered voters' signatures. However, opponents of mining and resource development have concluded that initiatives can be used to stop projects. The Alaska Minerals Commission does not believe that natural resource regulation should be done through the ballot initiative process, which lies outside of both legislative and constitutional control.

Although the Stand for Salmon ballot initiative did not pass, it could have prevented the use of even a single waterway for a major development project. Only the State of Alaska, acting through the legislative and executive branches, should have authority to control and develop its natural resources. Additional ballot measures of this kind could set a dangerous precedent for natural resource policy in Alaska.

#### Recommendation:

The Alaska Minerals Commission recommends pursuing reforms to limit the use and impact of ballot measures affecting natural resources policy. The late Senator Birch championed a bill, SB 80, that would bring greater accountability to the process by limiting severance. The Alaska Minerals Commission recommends support for SB 80 when it is considered in the House during the 2020 legislative session.



Kinross Gold - Fort Knox Gold Mine

#### 4. Support the Division of Geological & Geophysical Surveys (DGGGS)

The Minerals Commission recognizes the key role that the Division of Geological and Geophysical Surveys (DGGGS) plays in identifying Alaska’s mineral resources, collecting earth science data and working with exploration and mining companies. Basic science, especially geologic and geophysical mapping, often leads to mineral discoveries by the industry and eventually to production. Beginning in 2019, the DGGGS increased its focus on identifying metals considered strategic for national security. This research will benefit overall minerals exploration in Alaska as well. Critical minerals – including barite, graphite, platinum group metals, germanium, cobalt, antimony, tin, tungsten, and rare earth minerals such as yttrium and dysprosium<sup>[1]</sup> – are crucial to the production of everything from advanced military technology, to the automotive field, and energy products. Currently, the United States is heavily dependent on unreliable foreign producers such as China, Russia and the Democratic Republic of the Congo for many of its critical mineral supplies. This poses an unacceptable risk to the national and economic security of the United States. President Donald J. Trump’s addressed this by issuing the Critical Minerals Executive Order, which empowers the U.S Geological Survey to improve the topographic, geologic and geophysical maps of the United States in partnership with the States.

Notably, “Alaska consists of more than 663,000 square miles (1,717,000 square kilometers) of land—more than a sixth of the total area of the United States—and large tracts of it have not been systematically studied or sampled for mineral-resource potential.”<sup>[2]</sup> The DGGGS has been instrumental in establishing and maintaining Alaska as a priority region for this national critical-minerals effort. Since critical minerals are often by-products from mining base and precious metals, conducting new geological and geophysical surveys will facilitate exploration and development of a much broader spectrum of commodities. State matching funds are necessary to maximize the federal funding allocation to Alaska. Previous critical minerals initiatives were funded through the State of Alaska’s Airborne Geophysical/Geological Mineral Inventory (AGGMI) program and augmented by capital funds. This program was eliminated by budget cuts to the DGGGS in 2015. Funding proposed by the Governor and appropriated by the Legislature in 2019 re-started this data collection, but as the areas to be mapped are vast, long-term funding for data acquisition is necessary.

Creating and publishing geological and geophysical datasets are only two of the many ways the DGGGS supports the mining and minerals industry in Alaska. The DGGGS’ Geologic Materials Center (GMC) hosts the state’s archive of geologic samples collected by mineral and oil and gas exploration companies, as well as state and federal agencies, dating back to the early 1900s. Since moving to a new location, usage has tripled to 1,400-1,500 visits per year. The archive contains core samples and cuttings of 16.7 million feet of oil and gas exploration and production drill samples, and 354,000 linear feet of diamond-drill mineral exploration core samples.<sup>[3]</sup> The collection is growing rapidly and is increasingly valuable for resource development as it expands. The value of the sample collection will be leveraged by acquiring digital scanning equipment at the facility to produce high quality hyperspectral, photographic and XRF scans of the collection, and industry materials.

Finally, DGGGS’ role in promoting the State of Alaska at international mining conferences – where local experts can showcase our mineral potential, investment climate, and interact with investors – needs ongoing support. Roughly 80 percent of the funding for mineral exploration in Alaska is from companies housed outside of Alaska, most recently from Canada and Australia. These outreach activities are how Alaska lets the world know that Alaska welcomes mineral and mining investment.

#### Recommendation:

The Alaska Minerals Commission applauds the Governor and Legislature for the funding provided to the DGGGS in 2019 to restart the DGGGS’ collection of airborne geophysical data. The commission recommends that the Governor and Legislature continue to support assessment of Alaska’s critical minerals, and the President’s critical minerals initiative, by supporting long-term funding for airborne geophysical surveys, geological mapping and mineral inventories.

The Alaska Minerals Commission recommends that the Governor and Legislature support funding to the Alaska Geologic Materials Center to provide hyperspectral, photography and other non-destructive scans of core samples to leverage and archive available materials.

The Alaska Minerals Commission recommends that the Governor and Legislature reinstate funding to DGGGS to support attendance at international mineral and mining conferences to promote Alaska’s mining industry.

<sup>[1]</sup> U.S. Department of the Interior, May 28, 2018, Final List of Critical Minerals 2018, Vol. 83, No. 97, p. 23,295 – 23,296.

<sup>[2]</sup> U.S. Geological Survey, 2017, Geospatial Analysis Identifies Critical Mineral-Resource Potential in Alaska Fact Sheet

<sup>[3]</sup> Division of Geological & Geophysical Surveys, accessed January 2018, [dgggs.alaska.gov/gmc/inventory.php](https://dgggs.alaska.gov/gmc/inventory.php)

## 5. Reallocate portions of the state mining license tax to communities, while precluding targeted local severance taxes

The Alaska Minerals Commission believes that communities should benefit when natural resource exploration and development is done nearby. With increased need for local government funding, mining development can bring needed jobs and economic stimulus to rural parts of the State. Communities could be assisted by a reallocation of the State of Alaska Mining License Tax (AS 43.65). Mining License Tax collections continued to rise another 14 percent and were more than \$47 million in 2018, and tax does not have loss carryforward or carryback provisions. <sup>[1]</sup>

Presently there is no uniform mechanism to allocate a portion of the tax revenue back to communities associated with mineral development. Such a revenue-sharing model could provide needed assistance to communities.

Sharing portions of state revenue from mineral resource development with local communities in a predictable fashion reduces the need for local governments to impose their own industry targeted taxes, such as severance taxes. The uncertainty of the timing and size of a local tax could discourage mineral exploration. Moreover, allowing local governments to impose potentially onerous severance taxes shifts control of development decisions away from the state.

### Recommendation:

The Alaska Minerals Commission recommends that portions of the statewide mining license tax be allocated to communities located near mining operations in order to create a stable economic regime that can provide an attractive investment climate in Alaska.



Metallogeny Inc. Hoe Down on Tripple Creek – Alaska Minerals Commission

<sup>[1]</sup> Athey, Jennifer E., and Werdon, Melanie B., 2019, Alaska's Mineral Industry 2018: Alaska Division of Geological & Geophysical Surveys Special Report 74, p. 7

## 6. Timely Updates of Alaska Mapper Database

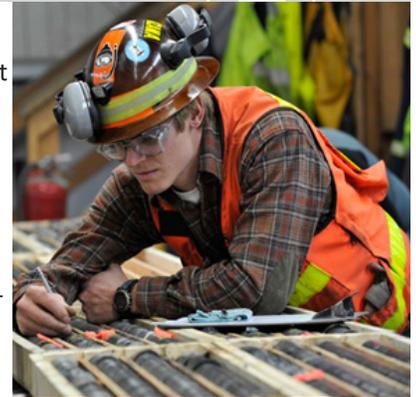
The Alaska Claims Mapper is an on-line resource that gives a graphical representation of current State of Alaska mining claims, sourcing information from an underlying database. Exploration, development and mining companies use the system to determine if mineral rights are available for claim staking, and from that determine whether they will make an investment in Alaska mineral rights. However, a major bottleneck currently exists. Due to processing constraints, it may take up to six months for newly-staked claims to appear on Alaska Claims Mapper. Further, claims that have been abandoned or declared void are not removed from the Alaska Claims Mapper system in a timely manner. It is not clear whether the bottle neck is due to lack of manpower to process the claim paperwork and do the needed cartography, or whether it is due to outdated computer software system, or both.

### Recommendation:

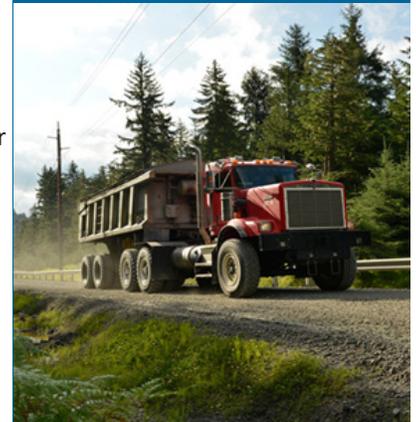
The Alaska Minerals Commission recommends that the Department of Natural Resources investigate and implement one of the following solutions:

- Increase dedicated staff time;
- Increase efficiency of the current system; or
- Change to a new database system that automatically updates the Alaska Claims Mapper

Timely updates of the Alaska Claims Mapper will enable companies to see what lands are available for exploration and will foster increased investment in Alaska's mineral industry.



Hecla Mining - Greens Creek Mine



## 7. Establish and maintain a stable state fiscal policy

Establishing and maintaining a stable state fiscal policy was one of the top priorities in the Alaska Minerals Commission's 2016, 2017, 2018 and 2019 annual reports.

The Mineral Commission would like to thank the Governor's Office for having every agency review budgets to see where progress and efficiencies could happen, while also maintaining a strong regulatory permitting program necessary to manage responsible mineral development and maintain access to critical mineral resources.



## Federal Priorities

### 1. Ensure the state defends Alaska's navigable waters and access corridors

Access by land, air, or water is fundamental to all mining activity in Alaska. Land selections across the state have created a checkerboard of land ownership—heightening the need for vital access corridors over lands. Whenever possible, such access across public lands must be maintained and even expanded when appropriate. The State of Alaska was, moreover, granted title to submerged lands under all navigable waters within state boundaries, when certain conditions are met, by the United States Constitution's Equal Footing Clause, the Alaska Statehood Act and the Submerged Lands Act. These navigable waters similarly provide crucial access necessary for mining and other activities. However, affirming state title over key submerged lands often requires legal action.

One way that the Alaska Department of Natural Resources (DNR) protects this vital access is through the work of the Public Access Assertion and Defense Unit (PAAD) within the Division of Mining, Land and Water. PAAD has the dual mission of asserting and defending both state title to its submerged lands and navigable waters and state title to its RS 2477 and other public trail network statewide.

PAAD has achieved considerable success over the past few years with both objectives. Working alongside the Alaska Department of Law (LAW), PAAD has won several victories against the federal government in litigation brought pursuant to the Federal Quiet Title Act. High-profile wins in recent years confirmed state title to navigable waters on the Mosquito Fork of the Fortymile River, the Stikine River, and the Knik River. The threat of litigation has led to further federal concessions for the Delta River, the Denison and West Forks of the Fortymile River, and the Kisaralik River and Kisaralik Lake. Regarding its work in protecting land-based access corridors, PAAD and LAW have achieved another significant victory when the Alaska Supreme Court confirmed RS 2477 status for significant portions of the Historic Iditarod Trail and created vital precedent that will benefit the state in perpetuity.

PAAD presently has other pending significant RS 2477 litigation, including a Quiet Title Act action seeking confirmation of state rights-of-way over federal lands. PAAD has other significant navigability litigation—including a Quiet Title Action seeking confirmation of state ownership of the North Fork and Middle Fork of the Fortymile River. All these cases spearheaded by PAAD will have a lasting impact on mining statewide since frequently the only access to natural resources crosses large swaths of federal lands.

#### Recommendation:

The Alaska Minerals Commission recommends that the Governor and the Legislature continue to fund and support the DNR's Public Access Assertion and Defense Unit's mission to pursue corridors across all public lands, as appropriate, to ensure everyone can legally access the land and its mission to protect and defend state title submerged lands under navigable waters statewide.



Alaska Minerals Commission - Alaska Placer





Ucore Rare Metals – Bokan Deposit

## 2. Renewal of the U.S. Army Corps of Engineers General Permit for Mechanized Placer Mining in Alaska

Section 404 of the Clean Water Act gives jurisdiction over discharge of dredged and/or fill material into waters of the U.S. to the U.S. Army Corps of Engineers. Wetlands, including streams, and habitats along stream banks or shores of ponds and lakes, are classified as “waters of the U.S.” A Department of the Army permit is required to excavate or place material in wetlands. In Alaska, smaller scale, mechanized placer mining can be permitted under a general permit that is intended to expedite permitting of routine mechanized activities in wetlands.

The current General Permit (GP 2014-55) for Mechanical Placer Mining in Alaska will expire on October 31, 2020. The U.S. Army Corps of Engineers will be publishing a draft renewal of the permit sometime in the spring of 2020 and will ask for public comments. The two primary criteria establish thresholds for placer mining impacts to wetlands and to streams. This GP stipulates that the active impact to wetlands at any one time must not exceed 5 acres and if a temporary stream bypass is used to divert water around a mining area, the total length must not exceed 1,500 feet. If either criterion is exceeded, the miner must submit an application for authorization to operate under an Individual Permit. The Individual Permit application process requires a greater level of detail for the proposed work and a 30-day public notice and comment period. Very generally speaking, and assuming the applications are complete and there are no outstanding issues, a General Permit currently takes from 2 to 4 months to complete and issue to the applicant, whereas, an Individual Permit can take longer than a year to complete. In 2019, the U.S. Army Corps of Engineers managed 92 General Permits and 15 Individual Permits for mechanized placer mining operations in Alaska.

A growing concern within the Alaska mineral industry is that Department of Army permit application review is taking longer and longer to complete. Tasks that used to be done in a matter of weeks are now taking months. One of the primary purposes of the General Permit was to devise an authorization for routine and typical, mechanized placer mining activities that can be expedited if the basic stipulations are not exceeded. Due to the real-world economic conditions for profitable commercial placer mining in Alaska, many projects will not meet the thresholds to qualify for the current limits of the General Permit and must then be “kicked up” to authorization under an Individual Permit. Even small-scale, subsistence-level family placer mines are finding that they cannot meet the criteria of the General Permit and hope to make a profit. Considering that most placer gold deposits in Alaska occur under active streambeds and adjacent floodplains or within older channels or benches under permafrost conditions, all of which likely constitute a type of “wetlands”, the 5-acre limit under the General Permit can be exceeded within the first year of operation. In some cases, mining activity has to be suspended or continued out of compliance while waiting for processing of an application for an Individual Permit. For many, this poses severe financial consequences, as well as a potential legal liability.

### Recommendation:

The Alaska Mineral Commission urges the Governor's administration through the Department of Natural Revenue (DNR) and the Department of Environmental Conservation (DEC) to work with miners and the U.S. Army Corps of Engineers to help develop a General Permit for mechanized placer mining that will accommodate the real world needs of the applicant, while adhering to the stated goals of the Clean Water Act.

During the previous public comment period for re-authorization of the General Permit, Department of Army employees were very receptive to listening to the voices of experience to remove the most onerous stipulations in the draft GP. It is hoped that this spirit of co-operation will continue in crafting a revised, new General Permit for Mechanized Mining Placer Mining in Alaska.

### 3. Continue lifting onerous public land orders (PLOs)

The federal government has approximately 2,600 public land orders (PLOs) across the state of Alaska. PLOs are actions implemented by the Secretary of the Interior to make, modify, extend, or revoke land withdrawals. Many of the major PLOs issued in Alaska derive from the Alaska Native Claims Settlement Act (ANCSA) under Section 17(d)(1), signed in 1971. These PLOs preclude mineral exploration from taking place in many areas of the state, and they often place regulatory burdens on valid, existing federal mining claims.

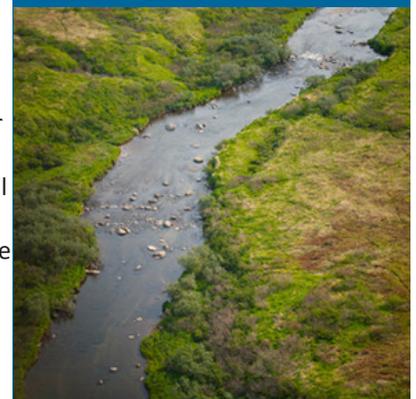
For the second year in a row, the Alaska Bureau of Land Management (BLM) offices are moving forward to lift, or extinguish, the first batches of PLOs that lie within selected Resource Management Plan (RMP) areas. While these efforts by the current federal administration should be recognized and appreciated, this process will require constant vigilance and participation by the State of Alaska.

#### Recommendation:

- The Alaska Minerals Commission recommends that the Governor work with Department of Interior (DOI) leadership to continue lifting PLOs that no longer serve their intended purpose. However, the process of defining an RMP must not undermine the 'no-more clauses' in the Alaska National Interest Lands Conservation Act (ANILCA). This is further explained under Federal Recommendation #3 in this report.
- The Alaska Minerals Commission recommends the Governor and Legislature work together to ensure that Department of Natural Resources' (DNR) Office of Project Management and Permitting (OPMP) is adequately staffed to respond to the large expected volume of federal plans and regulations.
- The Alaska Minerals Commission recommends that the Legislature continues to support the Department of Natural Resources' (DNR) Division of Geological and Geophysical Services (DGGs) so that it stays involved and contributing to the process of developing Resource Management Plans and the lifting of Public Land Orders



Pebble Limited Partnership -  
Pebble Mine



#### 4. BLM Resource Management Plans (RMPs) must not violate the “no more clauses” in the Alaska National Interest Lands Conservation Act (ANILCA)

Congress passed the Alaska National Interest Lands Conservation Act (ANILCA) in 1980, establishing more than 100 million acres of federal land in Alaska as new or expanded conservation system units (CSUs). Congress included many provisions in ANILCA to balance the national interest in Alaska’s scenic and wildlife resources with recognition of the state’s fledgling economy and infrastructure, and its distinctive rural way of life. To ensure that no further executive or administrative actions could be taken in Alaska to establish new CSUs, Alaska’s delegation included several “no more clauses” into the statute (sections 101(d), 1326(a) and (b), and 708(b)(4)).

The U.S. Bureau of Land Management (BLM) has been in the process of updating several Resource Management Plans (RMP) in Alaska. Normally these updates would involve modest changes, but under the previous presidential administration, the BLM used the RMPs as a tool that could severely restrict development on, and access across, federal lands. Even though the BLM’s mandate is to manage for multiple use, their recent plans have often included proposals and alternatives that provide extensive conservation, while essentially ignoring resource development.

The BLM is using management tools within the RMPs – including Areas of Critical Environmental Concern (ACEC), Research Natural Areas (RNA), and other special designations – to essentially close large areas to development. The BLM is attempting to avoid the withdrawal limitations of ANILCA without congressional approval by claiming the RMP restrictions are not withdrawals. However, since the RMPs are managed like a CSU, the Alaska Minerals Commission sees them having the same effect as a withdrawal and consider such moves a breach of the congressional intent in ANILCA.

In addition to resource development, these management plans also present a significant obstacle to infrastructure development and access. Furthermore, the RMP system of managing and restricting lands is complex, restricting most Alaskans’ abilities to participate meaningfully in the process and provide input.

#### Recommendation:

The Alaska Minerals Commission recommends the Legislature pass a resolution urging Alaska’s congressional delegation to prevent the BLM from imposing new RMPs in Alaska until the multiple-use mandate is reflected in the plans and there are no de facto withdrawals that violate the intent of the ANILCA.



## 5. Support revised definition of Waters of the US in accordance with the intent of the Clean Water Act

The U.S. Constitution and the intent of the Clean Water Act provide reasonable limits on federal authority on Waters of the United States (WOTUS).

A revised 2015 regulatory definition of the Waters of the U.S. (commonly called the 2015 WOTUS rule) was suspended by the U.S. Court of Appeals for the Sixth Circuit, and in response, the Environmental Protection Agency (EPA) and Department of the Army published a new proposed rule in December 2018 clarifying the definition of WOTUS. The repeal of the 2015 WOTUS rule was finalized and became effective December 23, 2019, effecting the pre-2015 Rule regulations informed by applicable agency guidance documents and consistent with Supreme Court decisions and longstanding agency practice.

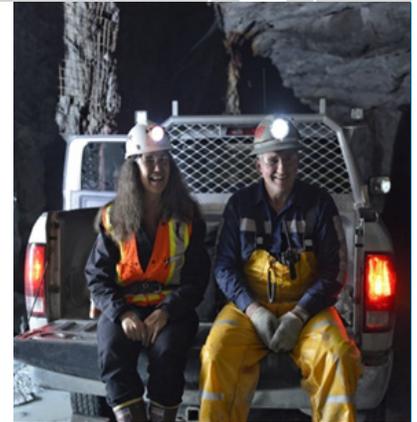
The agencies repealed the rule for four primary reasons:

- It did not implement the legal limits on the scope of the agencies' authority under the Clean Water Act (CWA) as intended by Congress and reflected in Supreme Court cases
- It did not adequately consider and accord due weight to the policy of the Congress in CWA section 101(b) to "recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution" and "to plan the development and use . . . of land and water resources." 33 U.S.C. 1251(b).
- It was open to interpretations of the CWA that push the envelope of constitutional and statutory authority absent a clear statement from Congress authorizing the encroachments of federal jurisdiction over traditional State land-use planning authority.
- It's distance-based limitations suffered from certain procedural errors and a lack of adequate record support

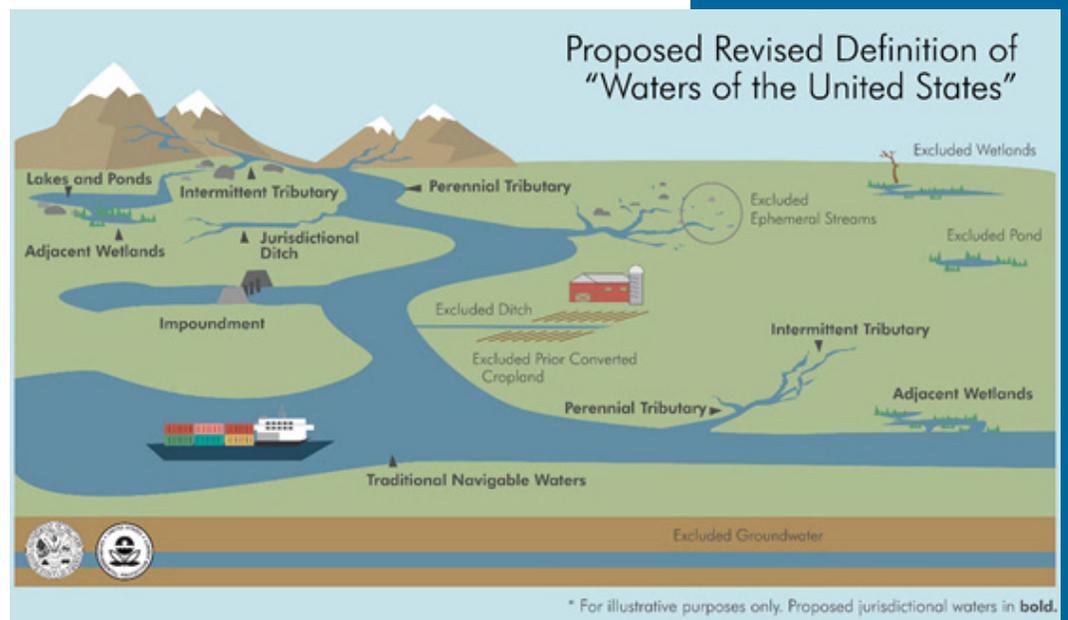
The Alaska Minerals Commission supports the goal of clean water, while also supporting the removal of the broad and unwarranted expansion of federal jurisdiction and regulatory burden.

### Recommendation:

The Alaska Minerals Commission recommends that the State of Alaska continue to monitor and support federal legislation that defines WOTUS according to the intent of the Clean Water Act and limits federal agency jurisdiction of navigable waters.



Coeur Mining - Kensington Mine





Mining Engineer Erich Hoefler during cleanup – Alaska Mineral Commission

**The Alaska Minerals Commission appreciates the public’s interest in these issues and the support of the Alaska minerals industry. Please feel free to contact the Alaska Minerals Commission with comments or concerns at any time.**

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