

2015



REPORT OF THE
ALASKA MINERALS COMMISSION

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INTRODUCTION AND EXECUTIVE SUMMARY

The Alaska Minerals Commission asserts the following findings:

1. The State of Alaska has the basic right to develop its resources.
2. The State of Alaska has demonstrated responsible development and will continue to do so.
3. Mineral development will diversify our economy and strengthen our state and nation.

The Alaska Minerals Commission (AMC) serves in an advisory capacity to the governor and the Alaska State Legislature. Its role is to recommend strategies to mitigate constraints on mineral development in Alaska. Created by the legislature in 1986, the commission's authorization was extended through 2024 by the Alaska State Legislature in 2013 via House Bill 99. Over the past 27 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 block responsible development.





The Alaska Minerals Commission commends state leadership on actions taken to improve the minerals exploration, development and production climate in Alaska. The commission has identified three specific issue areas with action items for 2015:

ISSUE	ACTION ITEM
1. Federal Regulatory Uncertainty	
Onerous Wetlands Mitigation	<ul style="list-style-type: none">Alaska must not let the federal agencies ignore the Alaska-specific flexibility afforded by the 1994 Alaska Wetlands Initiative, which states that compensatory wetlands mitigation is not required in Alaska.
Unwarranted BLM placer rules	<ul style="list-style-type: none">Alaska must act to prevent proposed new BLM permitting requirements from ruining the small placer miners on federal lands.
2. Resource Education	
	<ul style="list-style-type: none">Alaska should support K-12 and public resource education.
3. Outdated Federal Land Withdrawals	
	<ul style="list-style-type: none">Alaska should promote federal removal of outdated federal land withdrawals to either allow selection of valuable lands by the State or return the federal land to multiple use.

Alaska is perceived as a difficult place to permit a mining project due to federal agency failure to consider Alaska-specific conditions when implementing regulations. While the Commission supports stringent regulation, inconsistent enforcement of regulations and unbalanced judgments are not conducive to investment or economic development.

Mineral exploration and development continues to be impeded by the uncertainty resulting from new implementation and re-interpretation of regulations and policies by federal agencies; e.g., U.S. Army Corps of Engineers (USACE), Environmental Protection Agency (EPA), and Bureau of Land Management (BLM). Issues surrounding the definition and management of wetlands and new BLM rules for placer mining are of particular interest for 2015.



Federal Regulatory Uncertainty

ONEROUS WETLANDS MITIGATION

The State of Alaska is unique among the 50 states, territories, and trust properties of the United States. Alaska is the nation's only Arctic state, with vast areas of permafrost inappropriately defined as "wetlands." In addition to having over twice the length of shoreline of all the other coastal states combined, Alaska is also the largest land state in the country, occupies 20% of the nation's land base and contains half the nation's wetlands, and 40% of the nation's surface water. Approximately 46% of Alaska is classified as wetlands, but far less than 1% has been developed.

Due to the vast differences between Alaska and other states, Federal programs are often difficult to apply to Alaska even though those programs may very well meet the needs of other states. Federal flexibility and state collaboration to balance national policies with local conditions is needed for successful resource management.

In the past, the USACE successfully worked with the State and industry to maintain some flexibility in considering circumstances in Alaska in regards to implementing alternative analyses and compensatory mitigation requirements under the Clean Water Act Section 404 wetland regulatory program. For example, in 1994 after an extensive public process, the EPA, USACE, Fish and Wildlife Service, and National Marine Fisheries Service issued the Alaska Wetlands Initiative. In a memorandum dated May 13, 1994, the EPA and the USACE implemented policy statements that recognized the need for flexibility in establishing mitigation requirements for Section 404 permits and application of the no net loss of wetlands goal. From 1994 until 2009, the USACE successfully implemented the agreed upon guidance of "practicability" and "flexibility" for large projects in Alaska.

The implementation of the regulations changed abruptly in 2009 with the recruitment of new Alaska District Regulatory Branch leadership from the lower 48 that were not familiar with Alaska, its regulatory history, or the extensive stakeholder engagement that had culminated in the 1994 Alaska Wetlands Initiative.

In 2009, the USACE Alaska District issued a Regulatory Guidance Letter (RGL) 09-01 to the Alaska District staff that provided guidance on the implementation of the new national 2008 Mitigation Rule in Alaska. The new RGL direction inappropriately included mandatory mitigation ratios for compensatory mitigation with no consideration for site specific flexibility. In effect, it ignored the May 13, 1994 policy statement, despite the fact that the preamble to the 2008 Mitigation Rule specifically states, "...it does not change the May 13, 1994, Alaska mitigation statement...". In-lieu fees and mitigation banks became part of the methodology for providing compensatory mitigation. There are limited opportunities, even today, for these options on projects in the State of Alaska. Permittee-Responsible Mitigation (PRM) projects allowed under the 2008 Rule are limited by the requirement to provide conservation easements (permanent easements) on PRM projects. State and private land owners resist permanent easements as they want to have future options to develop their lands.

The 2008 Mitigation Rule and the 2009 RGL do not work for large resource development projects in Alaska. There are limited opportunities for wetlands mitigation and compensatory mitigation requirements can drastically impact development timelines and the economics of projects without any demonstrated environmental benefits.

{ RECOMMENDATION }

Alaska must not allow wetlands mitigation to stifle responsible development. The Commission recommends funding from the legislature and support from the administration to work with the USACE to recognize the 1994 Alaska Wetlands Initiative and implement flexible and affordable wetlands mitigation solutions tailored to Alaska-specific conditions.



Federal Regulatory Uncertainty

NEW BLM PERMITTING REQUIREMENTS THREATEN PLACER MINERS

The Alaska district of Bureau of Land Management (BLM) recently re-evaluated their implementation of 43 CFR 3809 which “applies to operations that involve locatable minerals, including metallic minerals; some industrial minerals, such as gypsum; and a number of other non-metallic minerals...” This change in policy is essentially a new regulation and would inappropriately place increased requirements on placer miners operating on federal lands. The new rules would require collection of at least one year of data prior to submitting an application and once the application is submitted, the review timeline uncertainty can force a small miner to miss an entire placer mining season, risking financial ruin. Under the existing permitting system, BLM staff are unable to process applications in a timely manner and placer miners have faced extreme hardship due to permitting delays. There are three decades of recent placer mining experience to demonstrate that the environmental impacts of placer mining are being well managed under the existing system of information collected by the Alaska Departments of Natural Resources, Environmental Conservation, Fish and Game and the BLM in the Annual Placer Mining Application (APMA). Since 2012, the Alaska District of the BLM has produced two National Reclamation Awards from Alaska placer miners on BLM land and in 30 years there

has never been a draw on the bond pool from placer miners on federal land. Despite this demonstration that the existing regulatory system is effective, the BLM nevertheless proposes to burden the placer miners by requiring the following supplemental documents:

- Baseline Data Report – Stream Profile and Photos
- BLM Supplement A – Performance Standards
- BLM Supplement B – Reclamation Plan
- BLM Supplement C – Water Management Plan
- BLM Supplement D – Interim Management Plan
- BLM Supplement E – Monitoring Plan
- BLM Supplement F – Spill Contingency Plan
- BLM Supplement G – Preliminary or Conceptual Designs and Plan
- A Reclamation Cost Estimate (RCE) may be requested by the BLM. Some operators, even those with a good record, and all remote operators who are beyond the road system, will not be able to use the Bond Pool.

These new procedures are unwarranted, unnecessary, will not result in meaningful incremental environmental protection, and will cripple the placer industry on federal lands.

{ RECOMMENDATION }

Considering the minimal impacts from many of the small “mom and pop” placer operators who do not have the means or the technical background to comply with onerous new rules, the State of Alaska should accelerate work with the BLM to utilize the permitting program already in place for placer miners to minimize the information requirements with environmental impacts and streamline the permitting timeline.



RESOURCE EDUCATION

Alaska's resource-based economy depends upon rational public policies which support responsible development. The Alaska Minerals Commission believes that having a population that is better informed about the benefits of mining to our society would help foster consensus and thereby remove a major constraint on responsible development. There are several facets of education that are important. Workforce education would prepare candidates for mining industry careers. Public workshops focused on the rigors of the permitting and regulatory system would benefit Alaska residents as they try to understand how the rigorous permitting system ensures that development impacts are minimized. Marketing efforts are needed to carry the message of Alaska's strong mineral endowment to a competitive world wide industry. And perhaps most importantly, Alaska's students must be informed about the need for minerals in our modern society, that those minerals must be mined from the earth, and that the permitting and environmental management systems implemented by modern mining operations in Alaska are some of the best on the planet.

For the 2015 report, the Commission chose to focus primarily on the importance of student education, with public education and international marketing also noted.

ALASKA RESOURCE EDUCATION

Science and engineering education during K-12 is vitally important in preparing students for careers in the mining industry and to prepare students for participation in Alaska's resource-based economy. Since 1982, Alaska Resource Education (ARE) has been instrumental in igniting young minds and inspiring students and teachers to learn about the importance of natural resources in their

everyday lives. As a 501(c) (3) organization based in Alaska, ARE is a partnership between private industry and the Alaska Department of Education and Early Development (DEED) – a relationship that is ideally suited to bridge the gap between natural resource employment opportunities, Alaska's resource economy, and the teachers who are educating tomorrow's workforce. Dedicated to the sustainable future of Alaska, ARE uses Science, Technology, Engineering, and Math (STEM) focused curriculum to teach principles and concepts that have local and tangible applications.

During 2014, ARE trained 64 teachers from four regions through Rock and Roll Around Alaska, a 500-level course certified through the University of Alaska that educates teachers about Alaska's natural resources and provides classroom-ready materials. During 2014, ARE provided instruction to 2,095 students from seven regions across Alaska.

PUBLIC EDUCATION INITIATIVE

Given the need to better educate the public about the benefit of mineral development to Alaska, the Commission should support and work with staff at the Department of Commerce, Community, and Economic Development (DCCED) to implement a modest marketing/educational effort for education to Alaskans about mining. The material could be hosted on the DCCED minerals website and would expand the state's suite of web-based resources.

MINERALS MARKETING

To attract mineral investment to the State it is important to advertise and educate companies about the great mineral wealth and resource-based economy of Alaska. The DCCED has developed programs to increase outside awareness and knowledge of the State, which include participation in industry conferences with promotional materials. Further directed investment in advertising will result in increased capital investment in Alaska.

{ RECOMMENDATION }

1. Preserve Alaska Resource Education's (ARE) general fund support at a state level of \$100,000 and appropriate an additional \$100,000 for new curriculum (i.e., a Google Earth-based geospatial Alaska minerals curriculum for grades 7-12).
2. The commission will work with DCCED on a modest outreach effort illustrating the benefits of the minerals industry to the State.
3. The DCCED should initiate cost effective participation in INTERNATIONAL TRADE EVENTS or partnerships to increase awareness of Alaska's great mineral potential.

Removal of Federal Land Withdrawals will

ALLOW STATE TO SECURE TITLE TO HIGH-PRIORITY LANDS

In the early 1970s, the Secretary of the US Department of the Interior (DOI) used a variety of authorities, mostly derived from the Alaska Native Claim Settlement Act (ANCSA), to withdraw land tracts so that Alaska Native Corporations would have a pool of lands from which to select. The State of Alaska “top-filed” on many of these lands so that it may claim title to the land in the event that a Native corporation did not. Today, conveyance of lands to Native corporation ownership is nearly complete. The majority of the State’s top-priority land selections are top-filed lands that should now be available, but the State’s selection does not attach until such time as the outdated land withdrawals are lifted by the DOI. Rather than removing the outdated withdrawals, the Bureau of Land Management (BLM) is

pushing the State to accept other lower priority land selections.

The original purpose for the land withdrawals has now been satisfied and the requisite Resource Management Plans required by the National Environmental Policy Act (NEPA) for removal of the withdrawals have been completed in many areas. The State Director of the BLM has recommended that the Secretary of the DOI remove specific withdrawals. The Secretary has the discretion to lift the withdrawals but has not acted. This inaction is detrimental to the State of Alaska’s ability to secure title to high priority lands to which it is entitled under the Statehood Act.

{ RECOMMENDATION }

1. The Commission recommends that the State actively and aggressively push the DOI to immediately and selectively lift the land withdrawals overlying the lands that have been top-filed by the State of Alaska.
2. The Commission recommends that the State work cooperatively with the BLM to develop a plan to lift all outdated land withdrawals, returning the federal lands to the public domain for multiple land-use designation.

