ALASKA

NORTH TO OPPORTUNITY

REPORT OF THE ALASKA MINERALS COMMISSION

JANUARY 2016

Bill Walker, Governor
State of Alaska

Chris Hladick, Commissioner
Department of Commerce, Community, and Economic Development

Britteny Cioni-Haywood, Director
Division of Economic Development

Alaska Minerals Commission

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 AMC'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.

Loading gold ore at Fort Knox

This publication was released by the Department of Commerce, Community, and Economic Development (DCCED) on January 15th, 2016. This Report is required by AS 44.33.431 (d) and does not constitute an official position or opinion by DCCED.

Commissioners

Karl Hanneman (Chairman)
International Tower Hill

Anna Atchison
Kinross Gold Corporation

Robert Retherford
Alaska Earth Sciences

Larry Westlake
Rural Community Member

Dr. Lance Miller
NANA Regional Corporation

Greg Beischer
Millrock Resources Inc.

Gary Reimer
AECOM

Jerry Birch
Taiga Mining Company

Stephen Trimble
Trimble Strategies, LLC

Bill Jeffress
SRK Consulting

Fred Wallis
Usibelli Coal Mine

Kensington Mine

ALASKA

NORTH TO OPPORTUNITY

Table of Contents

MINING INDUSTRY SUMMARY 2

TOP PRIORITY 3

STATE ISSUES 4

FEDERAL ISSUES 7

Exploration camp at Donlin supported a 20 year effort to define the project

Mining Industry Summary

Alaska has five large hardrock mines, one large coal mine, and two hundred small placer mines which together have approximately the same economic impact as an additional large mine. Together these operations provided 4,800 family wage jobs in 2012. The mining industry contributed an average of $96.4 million/year in revenue to the State of Alaska during the period 2010-2014, while costing the state an average of $10.7 million/year for regulatory and management programs.

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

Top Priority

1. Stable fiscal policy is needed to protect Alaska

Alaska must move quickly on a bi-partisan basis to establish a stable fiscal climate that will protect Alaskan's future and their opportunity to develop a diverse economy.

A financially stable state will be able to (1) maintain the strong regulatory permitting program necessary to manage responsible mineral development; (2) maintain access to critical mineral resources; (3) assert itself to enforce sovereignty in the management of natural resources in Alaska, and; (4) provide the stable base to attract prudent investment and development to Alaska.

Recommendation:

In order to establish a fiscal regime that can provide a stable investment climate for mineral investment in Alaska, the Alaska Minerals Commission (AMC) recommends bi-partisan cooperation to address the current budget deficit by:

- Making strategic reductions in the cost of government
- Utilizing Permanent Fund earnings
- Reducing the Permanent Fund dividend

After implementation of the above, consider enacting:

- A moderate increase in corporate income tax as a broad-based approach to raising business taxes.
- A personal income tax

With a stable fiscal regime as a platform, the State of Alaska will be able to address the issues identified by the Commission as priorities for 2016.

Issues where strong action by the State could reduce constraints on mineral development:

2. Ensure State defends rights to Alaska's navigable waters
3. Ensure State respects and upholds ANILCA
4. Support resource education and marketing
5. Improve tax climate for mineral investment

Issues where strong response from the State is needed to protect the Alaska economy from damaging federal action:

6. New BLM permitting requirements jeopardize placer miners on federal lands
7. President Obama's mitigation memo threatens responsible development
8. Wetlands mitigation must recognize the 1994 Wetlands Initiative
9. Outdated federal land withdrawals prevent land selections by the State of Alaska
10. Federal Office of Surface Mining regulations put Alaska coal production at risk

Alaska must move quickly on a bi-partisan basis to establish a stable fiscal climate that will protect Alaskan's future and their opportunity to develop an economy.

State Issues

2. Defend Alaska's rights to navigable waters

State ownership of the beds of navigable waters is an inherent attribute of state sovereignty protected by the United States Constitution. Under the Alaska Constitution and the public trust doctrine, all waters in the state are held and managed by the state in trust for the use of the people, regardless of navigability and ownership of the submerged lands under the Equal Footing Doctrine.

The Alaska Minerals Commission found value in the Department of Natural Resources (DNR) Public Access Assertion and Defense Unit (PAAD) initiative that worked with the federal government to identify which rivers were navigable at the time of statehood. The question of navigability has been contentious; even a decision by the U.S. Supreme Court has not put an end to disputes between the State of Alaska and federal agencies. The recent decision of the federal government to grant a Recordable Disclaimer of Interest (RDI) for Mosquito Fork is an example of success resulting from a sustained effort from the PAAD team.

Recommendation:

The Alaska Minerals Commission recommends that the departments of Natural Resources and Law:

- Continue to investigate navigability of state waters
- Work towards sufficient, streamlined and workable legal standards
- Develop strategies for requesting Recordable Disclaimers of Interest, monitor requests as they are processed
- Be a reliable resource for the public facing the consequences of navigability disputes

Greens Creek

3. Respect and Uphold ANILCA

The Alaska National Interest Lands Conservation Act (ANILCA) is comprehensive legislation to balance national conservation interests with the economic and social needs of the State and its citizens. The nuances of the law have at times been overlooked by new-to-Alaska federal land managers. In the past, the State of Alaska funded a specialist to coordinate ANILCA-related actions to ensure federal land use planning and decision making honor the compromise provisions in ANILCA. Alaska's current fiscal situation led to the cut of the position and with it, the reduction of a service critical to protecting the rights afforded to the state by ANILCA.

The Alaska Minerals Commission finds that statewide ANILCA coordination ensures a strong, unified position and a clear and consistent interpretation of federal law. Maintaining that consistency and the extensive expertise and historic relationships with federal agencies is critical in supporting Alaska's varied economic and social interests, including opportunities for responsible exploration and development of mineral interests. AMC members have experienced the value of a concise and unified state position at the state-federal interface.

Recommendation:

The Alaska Minerals Commission attests to the value of statewide ANILCA coordination and encourages the Alaska Department of Natural Resources and the Alaska State Legislature to find efficient ways to provide this important coordination.

Red Dog

Usibelli Coal Mine

4. Support Alaska Resource Education (ARE) and mineral marketing

There is a measureable knowledge gap in the United States regarding the mining industry. Topics such as: how mining works, the kind of responsible citizens that work in the mining industry, the skills workers require, the products they provide and the value of those products to the future security and success of our state and country; are not appreciated. In addition, a perception that mining regularly degrades or threatens the environment persists despite solid information to the contrary. Recognizing this knowledge gap several years ago, the State of Alaska and industry have focused on the education of young students (i.e., K-8) by partnering with Alaska Resource Education (ARE) to educate both teachers and students alike. In the past three years ARE has directly educated over 7,000 students across Alaska. It is time to expand ARE's excellent work into the high school arena. It is also time to develop effective marketing tools that will appeal to adults between the ages of 18-40 to teach them about an industry that is both necessary and clean.

Recommendations:

- Continue to support Alaska Resource Education and help them expand through development of high school curriculum. Recognizing the fiscal challenges the state is facing, ARE garnered significant private funding--as industry increased support in advance of 2016. The Alaska Minerals Commission asks the state to renew its general fund support of $100,000.
- The Alaska Department of Commerce, Community, an Economic Development in cooperation with ARE, the Alaska Miners Association, the Council of Producers, and the Minerals Commission, should identify and develop specific educational tools, ways to measure the effectiveness of those tools, and the necessary annual budgets to distribute the information.

Red Dog Mine, an economic engine for Northwest Alaska, produces zinc and lead for world markets

5. Improve tax climate for mineral investment

The mining industry understands the importance of contributing to the tax base of both the state and the local communities in which it operates.

However, uncertainty over the timing and size of the potential tax burden can discourage the investment needed to advance projects. Moreover, allowing local governments to impose potentially onerous severance taxes could inappropriately shift control of development decisions away from the state. In some circumstances, this could preclude the state from fulfilling its mandate to manage resources in a way that maximizes benefits to all Alaskans.

Recommendation:

Title 29 of the municipal tax code should be revised to preclude targeted industry taxes, such as local municipal severance taxes on mineral resources. This revision would not preclude a local government's ability to utilize broad based taxes, such as an area-wide property tax.

Aqqaluk deposit at Red Dog extends mine life until 2030

Federal Issues

6. New BLM permitting requirements threaten placer miners on federal lands

Beginning with the 2016 mining season, the Alaska District of the Bureau of Land Management (BLM) will begin implementation of their 2015 Instruction Memorandums (IMs) on placer mining, resulting in a monumentally increased burden on placer miners on federal lands. In addition to using information submitted by miners on the Annual Placer Mining Application (APMA), the BLM will require the following supplemental documents.

- 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 required by BLM

BLM has established a policy that all new Plans of Operations and proposed modifications affecting perennial streams in Alaska must include specific baseline environmental information more typical of larger hard rock mines. In Alaska, this baseline environmental information would have to be collected the season before submitting an application, potentially jeopardizing an entire season for some small miners.

In addition, new policies will require Reclamation Effectiveness Monitoring (REM). Potentially this would preclude release from financial assurance for 3-10 years or longer, putting many small miners at risk due to tied up working capital.

Many of the requirements of these supplements are beyond the expertise and the resources of the small placer miners. The requirements of the RCE will make it challenging for many of these miners to use the state bond pool. Instead, they would have to find some other form of financial guarantee, which would be very difficult, if even possible, to obtain. Three decades of placer mining experience demonstrate that the environmental impacts of placer mining are now 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 APMA. During the past three decades there has never been a draw on the state bond pool from placer miners on federal land. Despite the demonstration that the existing regulatory system is effective, the BLM is marching forward with the implementation of overly burdensome IMs. These new procedures will not result in meaningful incremental environmental protection but they will cripple the placer mining industry on federal lands.

Recommendation:

The State of Alaska needs to work with the Bureau of Land Management to utilize the already established permitting program for placer miners.

7. President Obama's mitigation memo threatens responsible development

On November 3, 2015 President Obama sent to the secretaries of Defense, Interior and Agriculture, the administrators of the U.S. Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) a memorandum directing them to establish for the first time a "net benefit goal" for natural resource use. At a minimum the memorandum calls for no net loss of land, water, wildlife and other ecological resources that fall under any federal action or permitting by these agencies.

The president directed the U.S. Department of Agriculture's Forest Service to develop and implement additional manual and handbook guidance on mitigation within 180 days. Those policies are to be finalized within two years. The Bureau of Land Management and U.S. Fish and Wildlife Service (FWS) each have a year to finalize their mitigation policies. The FWS was also ordered to create an additional policy for compensatory mitigation under the Endangered Species Act.

Alaska has struggled under the U.S. Army Corps of Engineers (Corps) and EPA's "avoid, minimize, and compensatory mitigation" for wetlands. The national mitigation goal proposed in the memorandum is an example of how the federal government attempts to implement a "one size fits all" strategy that does not consider the unique aspects of Alaska. Alaska, with our economic dependence on resource development (since statehood), should not have to endure the regulatory and permitting delays of President Obama's proposed guidelines and policies.

Recommendation:

Alaska must act along with other states to petition Congress to prevent the "Presidential Memorandum: Mitigation Impacts on Natural Resources from Development and Encouraging Related Private Investment" from being implemented.

Greens Creek facilites on Hawk Inlet support silver, zinc, and gold production

8. Wetlands mitigation must recognize the 1994 Wetlands Initiative

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". Approximately 46 percent of Alaska is classified as wetlands, but far less than one percent has been developed.

Due to the vast differences between Alaska and other states, it is often difficult to apply federal programs that meet the needs of other states to Alaska. Federal flexibility and state collaboration is needed to balance national policies with local conditions for successful resource management.

In the past, the U.S. Army Corps of Engineers (Corps) successfully worked with the State of Alaska and industry to maintain some flexibility in regards to implementing alternative analyses and compensatory mitigation requirements under the wetland regulatory program. For example, in 1994 after an extensive public process, the U.S. Environmental Protection Agency (EPA), the Corps, U.S. 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 Corps 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 Corps successfully implemented the agreed upon guidance of "practicability" and "flexibility" for large projects in Alaska.

However, the implementation of the regulations changed abruptly in 2009 with the recruitment of new district regulatory branch leadership for the Corps Alaska District. The new leadership was not familiar with Alaska, its regulatory history, or the extensive stakeholder engagement that had culminated in the 1994 Alaska Wetlands Initiative.

In 2009, the Corps 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. The RGL direction inappropriately ignored the May 13, 1994 policy statement, despite the fact that the preamble to the 2008 Mitigation Rule specifically stated, "…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 for these options on projects in the State of Alaska. Proponent Responsible Mitigation (PRM) projects allowed under the 2008 rule are limited by the requirement to provide conservation easements on PRM projects because land owners resist permanent easements.

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 in the state. 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 Alaska Minerals Commission recommends funding from the legislature and support from the administration to work with the Corps to recognize the 1994 Alaska Wetlands Initiative and to implement flexible and affordable wetlands mitigation solutions that are tailored to Alaska specific conditions.

9. Outdated federal land withdrawals prevent land selections by the State of Alaska

In the early 1970s, the Secretary of the U.S. 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 could claim title 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 of Alaska's top-priority land selections are top-filed lands that should now be available; however the State's selection does not attach until such time as the outdated land withdrawals are lifted by the DOI. 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. After an intensive, costly public process the state director of the Bureau of Land Managment (BLM) has recommended that the secretary of the DOI remove specific withdrawals. The secretary has the discretion to lift withdrawals covering more than 157 million acres of land 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. In 2015 House Joint Resolution 24 was made to incentivize the Alaska Congressional delegation to push the Interior Secretary to act. Lifting of the land withdrawals is the single most important issue to resolve the state's land entitlement. The Alaska Minerals Commission believes that the state must be more aggressive to resolve this issue.

Recommendation:

- The Governor of Alaska, in concert with the Attorney General, should petition the Interior Secretary directly to take action on the land withdrawals
- The State of Alaska should 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
- The State of Alaska should review the remaining selection priorities for smaller parcels of land so that conveyance to the state could make prospective lands available for mining

Compact camp and mill facilities at Red Dog support year round operations

10. Federal Office of Surface Mining regulations threaten Alaska coal production

The proposed Office of Surface Mining (OSM) Stream Protection Rule (SPR) contains new rules for coal mining near streams that give the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) new powers. The OSM proposes a new nationwide definition of "material damage" that does not consider regional differences.

The SPR is not a simple rule. It took nearly six years to write and amend 475 existing rules under the Surface Mine Control and Reclamation Act. The public was only given a 91 day comment period to digest nearly 3,000 pages of data.

The rule-making is flawed for Alaska; it underestimates the long-term potential of Alaska's coal development. The draft Environmental Impact Statement (EIS) for the rule considered only the Usibelli Coal Mine in Healy to determine that other Alaska coal deposits are not developable in the reasonably foreseeable future.

The SPR was not crafted with broad consideration of Alaska. The rule violates state's rights by ignoring regional discretion. It also invalidates Alaska's current coal permitting program with a Nullification Clause that allows OSM to retroactively invalidate a permit from the date of issuance. There is no appeal of an invalidated permit and no due process.

Recommendation:

The Governor of Alaska and the State Legislature should work to have the Office of Surface Mining Stream Protection Rule rescinded or to have Alaska exempted.

Hauling Greens Creek silver concentrates to Hawk Inlet

Alaska Railroad transporting Usibelli coal