



ALASKA

NORTH TO OPPORTUNITY

REPORT OF THE ALASKA MINERALS COMMISSION

JANUARY 2018



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State of Alaska

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and Economic Development

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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 Economic Development 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.



Northwest Alaska exploration - Photo Courtesy of NANA Regional Corporation

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Usibelli Coal Mine - Photo by Alex Legrismith

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Table of Contents

| | |
|--------------------|----|
| Introduction | 4 |
| Top Priority | 5 |
| State Priorities | 6 |
| Federal Priorities | 11 |

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; as well as playing an important role in construction and electricity generation. In Alaska, the mining industry has demonstrated its ability to help diversify the economy and to 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 achieve the Walker Administration's goal of a *Stronger Alaska*.

Alaska has five operating large hardrock mines, one large coal mine, and approximately 236 small placer mines¹. 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 Group², together these operations provided 4,350 direct jobs in 2016, employing residents from throughout Alaska. In 2016, mining provided a total of 8,600 direct and indirect jobs, with a total direct and indirect payroll of \$675 million. Mining provides some of the highest paying jobs in the state with an annual average wage of \$108,000. In addition, \$23 million in local government revenue was attributed to mining activities through property taxes and payments in lieu of taxes. In 2016, the mining industry provided \$81 million in state government-related revenue through rents, royalties, fees, and taxes, and \$111 million in payments to Alaska Native corporations.

The mining industry pays an Alaska corporate income tax of up to 9.4 percent of income, the same as 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 2018 report with 11 priorities and corresponding recommendations.

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

²Alaska Miners Association. The Economic Benefits of Alaska's Mineral Industry. The McDowell Group. January 2017.

Top Priority

1. Establishment of stable state fiscal policy

This top priority is unchanged from both the 2016 and 2017 annual reports. The Alaska Minerals Commission continues to believe that Alaska's leaders must move quickly and on a bipartisan basis to establish a stable fiscal climate that protects Alaskans and their opportunity to develop a strong economy.

A financially stable state government 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 necessary to attract investment and development to Alaska. This increased fiscal stability will lead to greater success in achieving the goals outlined in the statewide Comprehensive Economic Development Strategy (CEDS).

Recommendation:

- In order to establish a fiscal regime that can provide a stable investment climate for mineral investment in Alaska, the Alaska Minerals Commission recommends that state leaders act in a bipartisan manner to address the current budget deficit, including making strategic reductions in the cost of government and utilizing earnings from the Permanent Fund.

With a stable fiscal regime as a platform, the state will be able to address the additional 10 priorities identified by the Alaska Minerals Commission for 2018, which have been divided into state and federal issues (after priority number 1, priorities are in no particular order).

State Priorities

2. Reallocate portions of the state mining license tax to communities, while precluding targeted local severance taxes
3. Urge state leaders to be strong advocates for the minerals industry in Alaska
4. Encourage the Governor's Administration to challenge ballot initiatives that seek to regulate natural resource development
5. Address key state regulations governing water use
6. Ensure state defends the mining reclamation bond pool

Federal Priorities

7. Waters of the United States should be defined in accordance with the intent of the Clean Water Act
8. BLM Resource Management Plans are violating the "No More Clause" of the Alaska National Interest Lands Conservation Act
9. Lift onerous Public Land Orders
10. Ensure the state defends Alaska's navigable waters and access corridors
11. Urge action on federal land withdrawals



Photo Courtesy of Millrock Resources

“The Alaska Minerals Commission continues to believe that Alaska’s leaders must move quickly and on a bipartisan basis to establish a stable fiscal climate...”

State Priorities

2. 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. Whether related to large scale long-term mining or short-term seasonal prospecting, the economic boost to local economies from mining development can be accompanied by increased challenges in providing local government services. Communities could be assisted by a reallocation of the State of Alaska Mining License Tax (AS 43.65). 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 especially during the current state recession.

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. With uncertainty of the timing and size of a local tax, mineral investment could be discouraged. Moreover, allowing local governments to impose potentially onerous severance taxes shifts control of development decisions away from the state.

Recommendations:

- The Alaska Minerals Commission recommends that in order to create a stable economic regime that can provide an attractive investment climate in Alaska, portions of the statewide mining license tax should be allocated to communities located near mining operations.
- The Alaska Minerals Commission recommends that the municipal tax code be revised to preclude local municipal severance taxes on mineral resources. This revision should not prevent a local government's ability to utilize a property tax.

Greens Creek Mine



3. Urge state leaders to be strong advocates for the minerals industry in Alaska

Alaska is presently perceived as a jurisdiction that, while possessing excellent geologic potential, is a more difficult place in which to permit an exploration or mining operation. This, along with the high costs of operating in remote northern environments, can hinder investment in mineral exploration and development.

This perception can be readily changed by making sure that mining industry leaders in the United States and around the world know that mining is welcome in Alaska. This message should come from both the Legislature and Governor's Administration. Simple, overt communication to major mining companies and investors by these leaders will help attract mineral investment that could result in discovery and development of Alaska's future mines, increasing state revenue.

Recommendations:

- The Alaska Minerals Commission recommends that the Governor's Administration and Legislature create and promulgate a shared message of welcoming investment in and development of Alaska's mineral resources. State funding should also be increased for minerals marketing and promotion.
- The Alaska Minerals Commission recommends 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.

Bornite Camp - Photo Courtesy of Trilogy Metals



4. Encourage the Governor's Administration to challenge 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, 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.

For example, the current Stand for Salmon ballot initiative could preclude the use of even a single waterway for a major development project. Only the State of Alaska should have authority to control and develop its natural resources. This ballot initiative, if allowed on the ballot in 2018, could set a dangerous precedent for natural resource policy in Alaska.

Recommendation:

- The Alaska Minerals Commission recommends that the Governor's Administration continue to legally oppose the Stand for Salmon initiative, and future initiatives like it, as they would prevent the State of Alaska from following its constitutional mandate of developing natural resources for the maximum benefit of Alaskans.



Red Dog Mine



5. Address key state regulations governing water use

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. Designation of a Tier 3 waterbody results in a prohibition of any discharge that could degrade water quality, regardless of whether or not 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, discouraging industrial, municipal, or private activities that would require a water discharge permit. Once waters are designated as Tier 3, there is no recognized process to remove that designation. The Alaska Department of Environmental Conservation is currently working on developing a process for the nomination and designation of Tier 3 waters. Options under consideration for Tier 3 designation authority include the Alaska Legislature, a Tier 3 Board, the Alaska Department of Environmental Conservation, or the Governor.

Additionally, a reservation of water for instream flow (IFR) use is a form of water right that protects specific instream water uses, such as use by fish, for recreation, navigation, or water quality. It sets aside the water necessary for these activities and keeps later, junior water reservations from appropriating water that may affect the instream activity. Private individuals (including those who are not Alaska residents), organizations, and government agencies may apply for a reservation of water for instream use. Under current Alaska Department of Natural Resources regulations, IFRs are granted to the applicant, including private individuals and organizations.

Finally, the U.S. Environmental Protection Agency has updated national human health criteria to recommend a significantly higher fish consumption rate as the basis for calculating water quality standards. The Alaska Department of Environmental Conservation is working to identify and address the many issues related to fish consumption and implementation of associated water quality regulations. One of the key issues is how to address salmon and marine mammals and whether they should be excluded from the fish consumption rate, given that both species spend most of their lives in marine rather than fresh waters. Utilizing significantly elevated fish consumption levels has the potential to result in water quality standards with attainment levels that are below those that can be reached, or in some cases even detected, with current technology, hindering minerals development.

Recommendations:

- The Alaska Minerals Commission recommends that Tier 3 designation authority should reside with the Alaska Legislature. This will assure the most objective decision making process.
- The Alaska Minerals Commission recommends that the Alaska Department of Natural Resources promulgate regulations to ensure that IFRs are only granted to State of Alaska departments, regardless of the original applicant.
- The Alaska Minerals Commission recommends that the Alaska Department of Environmental Conservation fully evaluate the impact on associated water quality standards before proposing any changes to fish consumption rates.



Photo Courtesy of Millrock Resources

6. Ensure state defends the mining reclamation bond pool

The State of Alaska mining reclamation bond pool is a miner-funded capital pool managed by the Department of Natural Resources. It is a way for small mines in Alaska – including many family-owned placer mines – to cost effectively provide the reclamation financial assurance that is required by the state and the U.S. Bureau of Land Management (BLM). Without this option, many miners would have no alternative to provide the necessary financial assurance. Since the bond pool was established more than 25 years ago, there have been no significant claims against the fund, demonstrating that placer mining activities in Alaska are being reclaimed and are well managed by both the miners and regulators.

Through a long standing cooperative agreement, the State of Alaska and the BLM have allowed small miners on federal land to use the state bond pool to meet

BLM bonding requirements. The BLM's Instructional Memorandum No. 2015-01 requires new federal operations or operations modifying their plan of operations to complete a detailed Reclamation Cost Estimate (RCE). These RCEs require that all calculations assume that the reclamation would be completed by hiring third-party contractors. This exaggerates the cost of the reclamation, does nothing meaningful to help the miner or the environment, places undue burden on the family placer miner, and puts an unacceptable risk on the bond pool for outsized reclamation costs.

Recommendation:

- The Alaska Minerals Commission recommends that the State of Alaska continue to engage and work with the BLM to ensure that the bond pool remains solvent and is available for both state and federal operators to use.

Alaska Earth Sciences Groundhog Project





Photo Courtesy of Millrock Resources

Federal Priorities

7. Waters of the United States should be defined 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 regulatory definition of WOTUS in 2015 (commonly called the WOTUS rule) was suspended by the U.S. Court of Appeals for the Sixth Circuit and in response, the Environmental Protection Agency (EPA), Department of the Army, and the Army Corps of Engineers are currently using prior regulations defining the term “WOTUS.”

Published on February 28, 2017, the Presidential Executive Order “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the Waters of the United States Rule” states that it is in the national interest to ensure that the nation’s navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of Congress and the states under the U.S. Constitution.

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. After the 2015 stay and the Executive Order, the EPA and Department of Army are following a published process to consult with state and local officials, reevaluate the 2015 rule, and propose a new definition interpreting the jurisdictional bounds of the Clean Water Act that would replace the broader approach of the 2015 Rule.

Recommendation:

- The Alaska Minerals Commission recommends that the State of Alaska 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.

8. BLM Resource Management Plans are violating the “No More Clause” of the Alaska National Interest Lands Conservation Act

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

The BLM is using management tools within the RMPs such as Areas of Critical Environmental Concern (ACEC) and Research Natural Areas (RNA) to essentially close large areas to development. For example, in the Central Yukon Plan, the BLM increases the ACEC through the RMP from 1,796,260 acres to 6,064,500 acres. The BLM attempts to avoid the withdrawal limitations of the Alaska National Interest Lands Conservation Act (ANILCA) without Congressional approval by claiming that these RMP restrictions are not withdrawals. However, since they are managed like a Conservation System Unit, the Alaska Minerals Commission sees them having the same effect as a withdrawal.

In addition to resource development, another serious impact these plans will have on Alaska concerns infrastructure development and access. Review of the maps of each of these RMPs concerning the locations of ACEC, RNA, Public Land Orders, and other withdrawals, shows that the BLM has created a huge impediment for infrastructure development for the state. The RMP system of managing and restricting lands is complex and lengthy, restricting most Alaskans’ abilities to participate meaningfully in the process and provide input.

Recommendation:

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



Worker at Pogo Mine

9. Lift onerous Public Land Orders

The federal government has approximately 2,600 Public Land Orders (PLO) 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 and the Alaska National Interest Lands Conservation Act. These PLOs place added regulatory burdens on valid, existing federal mining claims, limiting the use and development of claims, and preventing or restricting access and use of federal lands.

Recommendation:

- The Alaska Minerals Commission recommends that the Governor and Legislature urge the Interior Department to lift all PLOs that no longer serve their intended purposes.

Photo Courtesy of Millrock Resources





Northern Lights above Bornite Camp - Upper Kobuk Mineral Projects

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

Access is key to mining activity in Alaska, whether it is by air, land, or water. Access is also critical to other activities such as hunting, fishing, recreation, and trapping. While the result of land selections across Alaska has created a checkerboard of land ownership, it is critical that access across public lands be maintained and expanded as needed.

Additionally, the U.S. Bureau of Land Management (BLM) has denied granting the state its title to submerged lands under navigable waters across the state. The Alaska Statehood Act and the Submerged Lands Act grants title of these lands to the state, where certain conditions are met. These lands and waters are crucial transportation routes for mining, trapping, hunting, commerce, and recreation. However, asserting title to these navigable waters often requires legal action. For example, the State of Alaska was successful in quieting title to the State-claimed portions of the Mosquito Fork, Stikine, and Knik rivers.

Recommendation:

- The Alaska Minerals Commission recommends that the Governor's Administration and Legislature continue to pursue access corridors across all public lands, as appropriate, to ensure all owners and users can appropriately and legally access land. This includes the continued efforts of the state to pursue title to navigable waters.



Core Sample from the Pebble deposit - Photo by Dave Harbour

11. Urge action on federal land withdrawals

In the early 1970s, the Secretary of the Department of the Interior used a variety of authorities, mostly derived from the Alaska Native Claim Settlement Act, to withdraw and reserve lands for study and classification. These withdrawals limited appropriations of the land in order to complete inventories of resources and assessment of values, which would allow for orderly development of land use and management objectives.

The original purpose for the land withdrawals has now been satisfied and the requisite Resource Management Plans required by the National Environmental Policy Act for removal of the withdrawals have been completed in many areas. The Interior Secretary has the discretion to lift withdrawals covering more than 150 million acres of land, but has not acted, even as the state director of the Bureau of Land Management (BLM) has recommended that the Secretary remove specific withdrawals. In 2015, the Alaska House passed Joint Resolution 24, urging the federal government to honor its commitments to transfer land to the state. This federal government 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.

Recommendations:

- The Alaska Minerals Commission recommends that the Governor's Administration formally request that the U.S. Secretary of Interior lift unnecessary land withdrawals and restore the land to multiple use designation.
- The Alaska Minerals Commission recommends that state leaders work cooperatively with 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 Alaska Minerals Commission recommends that the State of Alaska review the remaining selection priorities for smaller parcels of land. These smaller parcels can then be conveyed, allowing for mineral development.



Photo Courtesy of NANA Regional Corporation

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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