ALASKA

NORTH TO OPPORTUNITY

REPORT OF THE ALASKA MINERALS COMMISSION

JANUARY 2017

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and Economic Development

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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 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.

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Rural Community Member

Employees of Trilogy Metals, formerly NovaCopper, at the Upper Kobuk Mineral Project in the Ambler Mining District

Northern Lights dance above Bornite Camp, Upper Kobuk Minerals Project

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Alaska Railroad transports coal from Usibelli Mine

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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 4,400 direct jobs in 2014, employing residents from throughout Alaska.[1] The mining industry contributed an average of $96.4 million per year in revenue to the state during the period 2010-2014, while costing the state $10.7 million in FY14 in regulatory and management expenses.[2]

The mining industry pays an Alaska corporate income tax of up to 9.4 percent of income, the same as for all corporations in Alaska. The mining industry 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 profits 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 Commission has identified 11 priorities with action items for 2017.

[1] Alaska Miners Association. The Economic Benefits of Alaska's Mining Industry. January 2015.

[2] University of Alaska Anchorage Institute of Social and Economic Research. Fiscal Effects of Commercial Fishing, Mining and Tourism: What does Alaska receive in revenue? What does it spend? Loeffler and Colt. December 2015.

Top Priority

1. Stable fiscal policy is needed to protect Alaska

This top priority is unchanged from 2016; the Alaska Minerals Commission maintains that Alaska's fiscal situation must be addressed first and foremost to move toward economic growth and prosperity, for the minerals industry and the entire state. Alaska must establish a stable fiscal climate that will protect Alaskans' futures and their opportunity to develop an economy that will provide family wage jobs.

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.

Recommendations:

In order to establish a fiscal regime that can provide a stable investment climate for mineral investment in Alaska, it is recommended that state leaders act in a bipartisan manner to address the current budget deficit by:

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

After implementation of the above, consider enacting:

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

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 2017:

State Priorities

2. Improve tax climate for mineral investment by preventing local targeted taxes

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Worker at Red Dog Mine

Alaska's fiscal situation must be addressed first and foremost to move toward economic growth and prosperity, for the minerals industry and the entire state.

State Priorities

2. Improve tax climate for mineral investment by preventing local targeted taxes

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 within municipalities that might impose industry specific targeted taxes can discourage the very 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 for all Alaskans. The need to limit municipal taxation of significant resource development was recognized decades ago with the oil and gas industry, and this need is now evident in the mining industry.

Recommendation:

- The Alaska Minerals Commission recommends that Title 29 of the municipal tax code be revised to preclude targeted industry taxes, such as local municipal severance taxes on metallic mineral resources. This revision would not prevent a local government's ability to utilize broad based taxes, such as area wide property taxes.

Red Dog Mine, a major zinc and lead mine in Northwest Alaska

3. Ensure state defends sovereignty, such as rights to Alaska's navigable waters and protections for Alaska under ANILCA

State ownership of the beds of navigable waters is an inherent attribute of state sovereignty protected by the U.S. Constitution. Under the Alaska Constitution and the public trust doctrine, all waters in Alaska 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. Recent success by the State of Alaska against the federal government in asserting state's rights to navigable waters demonstrates that a sustained commitment to this effort is timely and warranted.

ANILCA is comprehensive legislation to balance national conservation interests with the economic and social needs of the state and its citizens. However, the nuances of the law have, in the past, been overlooked by new-to-Alaska federal land managers.

Recommendations:

- The Alaska Minerals Commission recommends that the Alaska Department of Natural Resources and Department of Law continue to investigate navigability of state waters; work towards sufficient, streamlined and workable legal standards; develop strategies for requesting recordable disclaimers of interest (RDI); follow up and monitor RDI requests as they are processed at the BLM; and be a reliable resource for members of the public facing the consequences of navigability disputes.
- The Alaska Minerals Commission encourages the Department of Natural Resources and the Alaska State Legislature to find efficient ways to ensure that the federal government honors the provisions of ANILCA.

Donlin Gold exploration camp

4. 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. 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 recently issued Instructional Memorandum No. 2015-01 that 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 greatly exaggerates the cost of the reclamation, does nothing meaningful to help the miner or the environment, places another undue burden onto 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 work to ensure that the bond pool remains solvent and available for both state and federal operators to use.

Red Dog Mine

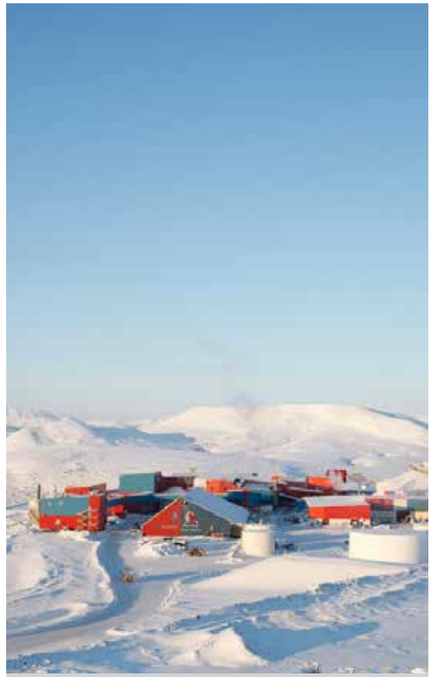
5. Support resource education and marketing

In order to communicate how our civilization depends upon a thriving mining industry to provide the building blocks of modern society, to attract the next generation of workers into the mining industry and to communicate the value of mining to the state's economy, education in and marketing on behalf of the mining sector should be prioritized. How mining works, the kind of responsible citizens that work in the mining industry, the products mining provides and the value of those products to the future security and success of the state and country are not fully appreciated, especially in youth and young adults. In addition, there is poor awareness of the efforts that the modern mining industry puts forth to minimize adverse effects on the environment.

Recognizing the problem of educating Alaska youth in these topics, in 1982 the state and the mining industry began focusing on the education of young students (K-8) by creating the Alaska Mineral and Energy Resource Education Fund. The project began as a joint venture between the private sector and the Alaska Department of Education (DOE). DOE developed curriculums and trained teachers how to use them. The industry's role was to raise money and provide expertise through its membership. In 1996, seeing the value of the program, the Alaska State Legislature began allocating $100,000 annually to support the efforts of what is now known as Alaska Resource Education. State financial support is no longer available, but the program is no less important and continues with support from private industry.

Recommendations:

- The Alaska Minerals Commission recommends supporting the nonprofit organization Alaska Resource Education and their work in K-12 resources-related curriculum through cooperation with the state departments of Education and Commerce, Community & Economic Development.
- The Alaska Minerals Commission recommends that a marketing task force be created, including State of Alaska personnel and private industry representatives, to research and suggest efficient marketing methods to communicate the benefits and value of the mining industry to Alaska. The task force would recommend ways to use social media, present factual information from the industry and engage young people statewide.



Red Dog Mine

"To communicate the value of mining to the state's economy, education in and marketing on behalf of the mining sector should be prioritized."

6. Develop a trust fund financial assurance program for large mining projects

The mining industry believes that providing financial assurance for the responsible reclamation and closure of mining operations is appropriate. However, the Alaska Minerals Commission believes that the manner in which financial assurance is required by the State of Alaska is punitive to the industry. Current state policy requires all large mines, even those with projected lifespans of decades and those being developed or operated by companies with investment-grade balance sheets, to fund the entire amount of the estimate future reclamation and closure costs to the state before the mine is developed. For some mines in Alaska, this effectively requires tens or hundreds of millions of dollars in cash to be pledged to the state for decades before it is needed, significantly increasing the financial burden on the projects and making it much more difficult to extend existing mines or develop new projects.

Recommendation:

- The Alaska Minerals Commission recommends that the State of Alaska develop the statutes and regulations necessary to establish a mining financial assurance sinking fund program. This program should reflect the anticipated life of the mine and the financial strength of the company developing or operating the mine to gradually build the reclamation and closure capital pool over the projected life of the mine.

Loading gold ore at Fort Knox

Niblack Project in Southeast Alaska

Federal Priorities

Past Alaska Minerals Commission annual reports have cited many federal regulations and initiatives that have presented constraints on the development of the mining industry in Alaska. In the 2016 report, these included restrictive BLM permitting requirements for placer mining, President Obama's mitigation memo, wetlands mitigation policy changes, federal land withdrawals preventing state land selections and proposed federal Office of Surface Mining regulations on the Stream Protection Rule. A strong and united state voice can provide effective advocacy and engagement with federal agencies and elected officials, aligning the interests of private industry, state government and federal priorities. The Alaska Minerals Commission continues to urge both the Alaska Governor and the Alaska State Legislature to increase advocacy on issues of state importance at the federal level to reflect the interests of all Alaskans and their right to responsibly develop their land.

7. New EPA financial responsibility requirements duplicate existing Alaska laws

In December 2016, the EPA introduced new draft financial assurance requirements under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) that are unnecessary and duplicative of Alaska's existing requirements. The requirements could have significant negative impacts on minerals investment in Alaska, including for existing operations.

As summarized by the EPA in the Federal Register: "The proposal would establish a process for owners and operators subject to the proposed rule to identify a financial responsibility amount for their sites, to demonstrate evidence of financial responsibility, and to maintain the required amount of financial responsibility until the requirement for financial responsibility for the site is released by EPA."

At present, the rule is focused on "Financial Responsibility Requirements under CERCLA Section 108(b) for Classes of Facilities in the Hardrock Mining Industry," however, other industries will be the targets of subsequent rulemaking. The focus on the mining industry will be followed by targeting the chemical, petroleum and electric power industries in 2019–2022. The exact schedule of which industry is next is not known.

This rule is unnecessary, redundant and poorly constructed, and exemplifies all the problems of rushed rulemaking from an outgoing presidential administration. The existing financial assurance system required by the State of Alaska already addresses the environmental risks of mining and mineral processing sites, and is one of the most robust in the country. The additive cost of additional or duplicative bonding to satisfy the EPA could make mining financially prohibitive in Alaska, and does nothing to further protect the environment, while driving mineral investment and development outside the U.S., increasing our reliance on foreign mineral sources.

Throughout the process, the EPA has conducted the rulemaking with little to no consultation with actual experts from the mining sector. Even though the Alaska Native Claims Settlement Act (ANCSA) resource managers group sent a letter to the EPA and the Office of Management and Budget asking for consultation due to the impact this rule could have on mining on ANCSA lands (e.g., Red Dog and Donlin Gold mines), the EPA provided no opportunity for early involvement. The State of Alaska also sent letters expressing concern about the EPA's lack of outreach on such an important issue regarding Alaska lands.

Recommendation:

- The Alaska Minerals Commission urges the Alaska State Legislature to support efforts by the Alaska Governor's Office and Alaska's congressional delegation to prevent the EPA from imposing new financial assurance requirements or, at a minimum, work to exempt Alaska from this rule given it duplicates programs already in existence within state law.

Red Dog Mine

8. Waters of the United States should be defined in accordance with intent of 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). Unfortunately, the EPA and the U.S. Army Corps of Engineers are attempting to expand the Clean Water Act through the new WOTUS rule. This rule does not provide clarity on which waters are federally regulated, and it does not delineate between state and federal waters. It does not conform to the original intent of the Clean Water Act, instead giving expanded authority to federal regulators.

Recommendation:

- The State of Alaska should urge the U.S. Congress to enact legislation that defines WOTUS according to the intent of the Clean Water Act and limits federal agency jurisdiction to navigable waters.

Workers at the Niblack Prospect in Southeast Alaska

Fort Knox Mine near Fairbanks

9. BLM permitting requirements through Instruction Memorandum threaten placer miners on federal lands

In 2016, the Alaska District of the BLM began implementing its 2015 Instruction Memorandums (IM) on placer mining, which resulted in a monumentally increased burden on placer miners on federal lands. In addition to asking miners to submit an Annual Placer Mining Application (APMA), BLM requires numerous supplemental documents and data. These IMs and the information requested are not required by the regulations, but instead represent a poor management decision on how the BLM was going to manage placer mining permits. Three decades of recent placer mining experience 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 also the BLM in the APMA. That placer mining is being well managed in Alaska is evidenced by the fact that since 2012, the Alaska District of BLM has produced three National Reclamation Awards from Alaska placer miners on federal land. Additionally, during the past three decades, there has never been a draw on the bond pool from placer miners on federal land for non-performance of reclamation requirements. Despite this demonstration that the existing regulatory system is effective, BLM is marching forward with the implementation of these overly burdensome IMs. These new procedures are unwarranted and unnecessary and will not result in meaningful incremental environmental protection. But they will cripple the placer mining industry on federal lands.

Recommendation:

- The Alaska Minerals Commission urges the Alaska State Legislature to pass a resolution urging Alaska's congressional delegation to help prevent the imposition of new BLM IMs in Alaska that threaten the existence of placer miners on federal land.

Usibelli Coal Mine

10. BLM Resource Management Plans are violating the "No More Clause" of ANILCA

The 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 Obama Administration, the BLM has used the RMPs as a tool that will 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 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. If the state is going to broaden its economic base and strive to provide more affordable energy across Alaska, it must be able to economically develop its infrastructure as needed without the numerous new federal restrictions that will result from these RMPs. The RMP system of managing and restricting lands is complex and lengthy (often documents comprised thousands of pages), restricting most Alaskans' ability to participate meaningfully in the process and provide input.

Recommendation:

- The Alaska Minerals Commission urges the Alaska State Legislature to pass a resolution urging Alaska's congressional delegation 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 ANILCA.

11. Congressional Review Act needed to reverse new rule from the Department of Interior regarding surface coal mines.

When Congress passed the Surface Mine Control and Reclamation Act in 1977, granting primacy to the states for regulation of the nation's coal mines, Section 708 of that law recognized the unique conditions of Alaska's coal mining environments and provided that Alaska must be considered separately when implementing the law. The December 2016 Stream Protection Rule, as promulgated by the Federal Office of Surface Mining, Reclamation and Enforcement within the U.S. Department of Interior, attempts to be a one-size-fits-all method of regulating surface coal mining in America. The new rule ignores Alaska's uniqueness, creates unattainable standards and disregards states' rights and their primacy over coal programs. It is a rule in search of a problem that was not crafted with stream protection in mind.

The coal mining industry, joined by states and congressional allies, is seeking a Congressional Review Act resolution of disapproval within the first 60 days of the Trump Administration to stop this rule from taking effect.

Recommendation:

- The Alaska Minerals Commission urges both the Governor of Alaska and the Alaska State Legislature to request that Alaska's congressional delegation work to pass a Congressional Review Act resolution to disapprove the final Stream Protection Rule. The rule provides no discernable environmental benefits, while duplicating and interfering with extensive existing environmental protections at both the federal and state levels.

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

Drilling blast holes at Fort Knox

Pogo Mine worker