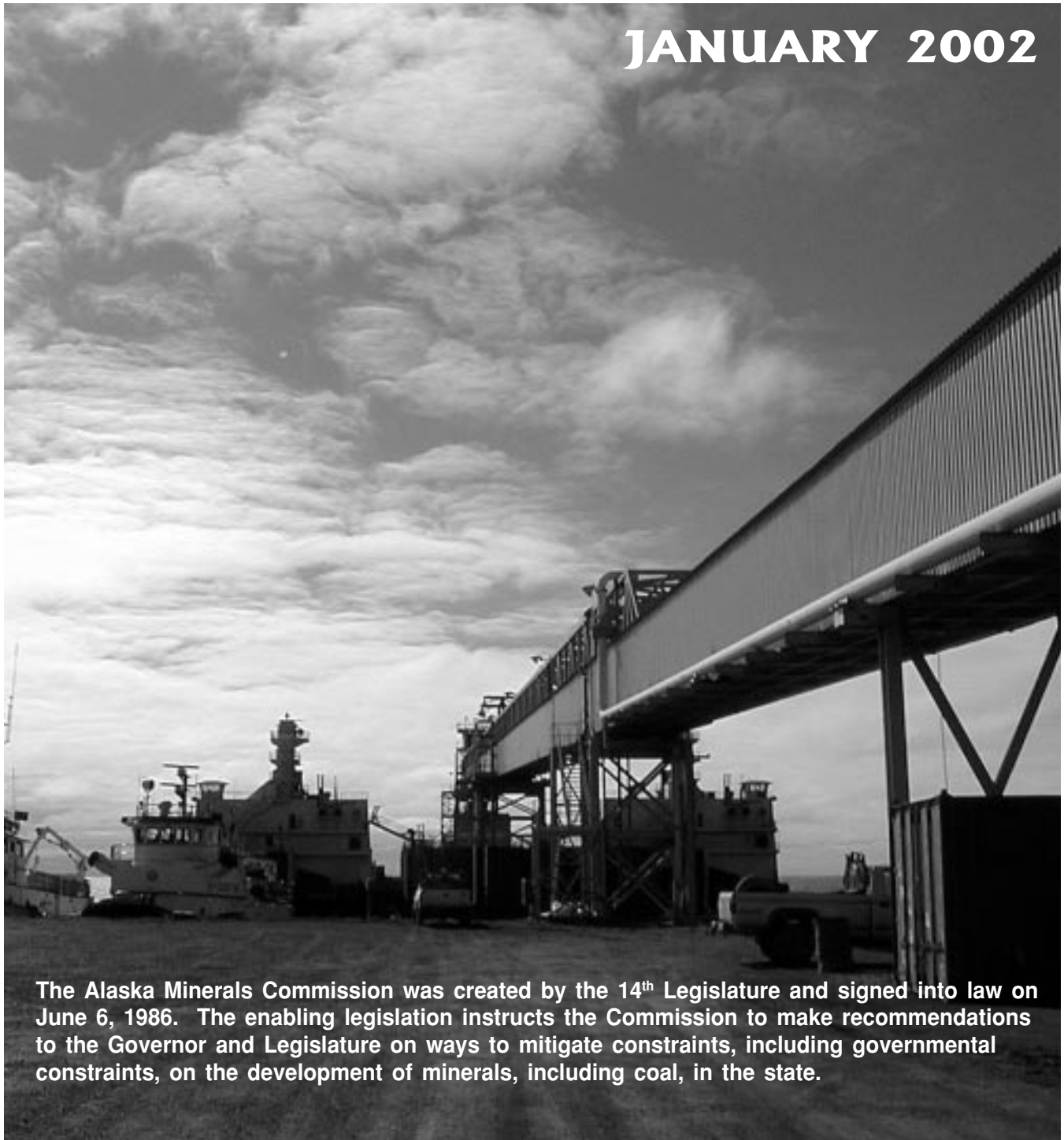


REPORT OF THE **Alaska Minerals Commission**

JANUARY 2002



The Alaska Minerals Commission was created by the 14th Legislature and signed into law on June 6, 1986. The enabling legislation instructs the Commission to make recommendations to the Governor and Legislature on ways to mitigate constraints, including governmental constraints, on the development of minerals, including coal, in the state.

ALASKA MINERALS COMMISSION

JANUARY 2002

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FOREWORD

The Alaska Minerals Commission again wishes to thank the Governor and the Legislature for implementing some of our recommendations during 2001. Highlights include reconstitution of a core permitting team at the Alaska Department of Environmental Conservation, and continued funding for the airborne geophysical surveys. Partly as a result of the responsive actions of the Governor and the Legislature over the last few years, the global mining industry presently considers Alaska a favorable place to do business and is demonstrating its growth potential.

The Commission also wishes to compliment the Alaska Department of Natural Resources for implementing on-line access to records in the Recorder's Office and in the Land Records Information System.

The Alaska Minerals Commission was created by the 14th Legislature and signed into law on June 6, 1986. The enabling legislation instructs the Commission to make recommendations to the Governor and Legislature on ways to mitigate constraints, including governmental constraints, on the development of minerals, including coal, in the state.

The Commission has presented reports to the Governor and Legislature annually since January 1987, and is authorized to do so until January 2004. Commission members are appointed by the Governor, the President of the Senate, and the Speaker of the House. The current members are representatives of placer, hard rock, and coal mining industries and come from diverse areas of the state.

During 2001, the Commission held meetings in Fairbanks and Anchorage. The recommendations in this report are the result of input at these meetings. All Commission meetings are open to the public, and members encourage comments from all interested parties at any time.

Following the list of recommendations in the executive summary, this report contains background information, or "findings", on each issue, followed by the related recommendation. These have been grouped into Part A that deals with issues that are mainly State issues, and Part B that includes federal issues affecting the State that can be influenced by State participation.

On behalf of the members of the Commission, I would like to express our appreciation to those members of the public, the Alaska Miners Association, the Resource Development Council, and the many government agencies and private organizations that contributed to the preparation of the report. The Commission wishes to thank Commissioner Deborah B. Sedwick of the Department of Community and Economic Development and Dick Swainbank and Frankie Pillifant of the Division of Community & Business Development who have provided excellent administrative and professional support to the Commission.

Irene Anderson, Chair

ALASKA MINERALS COMMISSION

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EXECUTIVE SUMMARY

Recommendations Implemented

During 2001 several of the recommendations from the January 2001 Alaska Minerals Commission report were effected, or substantial progress was made in their implementation.

- Funding was provided for the airborne geophysical surveys and for Alaska Mineral and Energy Education Fund (AMEREF).
- The Department of Natural Resources is creating an on-line site where all mining claims and prospecting sites statewide can be examined.
- The Department of Environmental Conservation was able to reconstitute a core team of permit professionals for wastewater disposal permits.

Since the first report in 1987 there have been numerous recommendations of the Alaska Minerals Commission implemented, including:

- Passage of Alaska Mineral Policy Act (1988);
- Funding for the AMEREF program (1987-2001);
- Funding for the Citizen's Advisory Commission on Federal Areas (1991-1998);
- Addition of the Department of Commerce to the Resource Cabinet (1992);
- Exemption of minerals from municipal in-situ taxation (1992);
- Funding for airborne geophysical surveys (1992-2001);
- Creation of a task force for RS2477 trail inventory (1993);
- Restriction of Mineral Closing Orders (1993);
- Protection for claimants on state-selected land (1994);
- Extending terms of permits when legal impediments prevent use (1994);
- Selection of lands with high mineral potential (1994);
- Passage of the Exploration Incentives Act (1995);
- Passage of the Diminutive Discharge Bill (1995);
- Providing more flexible work hours for miners (1996);
- Allowing coal mines access to the state bonding pool (1996);
- Assertion of RS2477 rights-of-way (1997);
- Legislative Resolution 31 was passed opposing International Parks, World Heritage Sites, and Marine Biosphere Reserves in western Alaska, and supporting the federal American Lands Sovereignty Protection Act (1997);
- Resolution of the Mental Health Lands issue (1997);
- Funding was provided to update equipment in the Recorders Offices (1998);
- Establishment of a rational State water quality standard for arsenic (1998);
- The Alaska Minerals Commission was authorized to continue until February 2004 (1998);
- Baseline water quality studies by the U. S. Geological Survey and the Division of Mining, Land and Water continued in the Fortymile and Goodpaster watersheds (1998-2001); and
- The Department of Environmental Conservation received funds for a core permitting team (2001).

Obviously the Commission cannot take sole credit for the resolution of many of these issues, but it is encouraging to note the success of Commission recommendations, thanks to the efforts of the Legislators and Governors in recent years.

Unfortunately State oversight of federal actions is greatly diminished due to the demise of the Citizen's Advisory Commission on Federal areas (CACFA), and the disbanding of the RS2477 and Navigability task forces within the Division of Mining, Land & Water. These issues were of concern in many of the previous reports, and the demise of these programs will jeopardize Alaska's ability to obtain access to its lands in the future.

Industry Overview

The total value of Alaska's mining industry in 2001 is expected to remain the same as in 2000, or possibly decline slightly. The Mill Optimization Project at the giant Red Dog Mine has not yet translated to increased production; metal prices have declined substantially, and investment in both exploration and development statewide decreased from the levels in previous years. Production at Red Dog and at Fort Knox is expected to increase in 2002, and a new mining plan at the Kensington Mine may allow the potential of this project to be realized.

Precious metals (gold, silver, and platinum group elements) continue to be the focus of most of the exploration in Alaska in 2001. Highlights include an aggressive drilling project at Donlin Creek to evaluate some of the higher-grade gold zones within the 13-million-ounce resource. Drilling at the True North gold project near Fairbanks in 2001 was designed to evaluate several zones to provide feed for the Fort Knox mill. Field activity at the Pogo gold deposit near Delta Junction was limited to surface exploration, with the major focus at this project on the feasibility study, the permitting process, and the associated Environmental Impact Statement.

Exploration at Red Dog was mainly for shallow shale-bed gas as an alternative fuel source for the mine.

On the south flank of the Alaska Range, exploration for platinum-group elements was curtailed due to the uncertain land status. Drill programs for gold and silver were reported near Tok and Northway.

The State Division of Geological & Geophysical Surveys contracted for airborne geophysical surveys near Cantwell, east of Healy, and southeast of Pogo. Geologic mapping continued in 2001 in the Fortymile and Goodpaster River areas that had airborne surveys in past years.

PART A: ISSUES REQUIRING STATE ACTION

The following recommendations are organized in a modified form from those in years past to focus on the agencies with jurisdiction over the issues brought before the Commission in meetings during the 2001 calendar year.

1. DEPARTMENT OF ENVIRONMENTAL CONSERVATION

1.1) PERMIT EFFICIENCY

- a) The Administration must continue to aggressively search for and find means to accommodate the use of third-party contractors who will work under the core managers to provide permit development support on an as-needed basis and extend these efforts to all types of environmental and resource permitting. The Legislature needs to encourage and support the Administration in this effort.
- b) The Legislature should require a periodic permitting status report accounting for agency staff and management.

1.2) WATER QUALITY STANDARDS

In order to encourage industry to incorporate sound science in its development projects, the State of Alaska, through the Department of Environmental Conservation, must itself respond to advancing science by updating the water quality standards through adoption of the dissolved water quality criteria approved by the Environmental Protection Agency in 1999.

1.3) NPDES ADMINISTRATION

The Governor should direct the Alaska Department of Environmental Conservation (ADEC) to develop a plan for assuming administration of the National Pollutant Discharge Elimination System (NPDES) program, and the Legislature should provide the necessary funding to ADEC to support this effort.

1.4) MIXING ZONES

The Governor should direct the Department of Environmental Conservation and the Department of Fish & Game to work with user groups to develop mixing zone regulations that will, at the department's discretion, authorize mixing zones in spawning areas if:

- (a) The discharge is not reasonably anticipated to adversely affect the capacity of the area to support present or future spawning activities; or
- (b) The discharge is reasonably anticipated to adversely affect the capacity of the area to support present and future spawning activities and the Department of Fish and Game has approved a plan to mitigate all reasonably anticipated adverse impacts.

1.5) BASELINE DATA

The Governor should direct the Alaska Department of Environmental Conservation (ADEC) to work with industry to develop priorities for basic research on topics important to Alaska, such as arsenic toxicity, total dissolved solids and pH, and to develop plans for funding this basic research.

2. DIVISION OF GOVERNMENTAL COORDINATION

2.1) ALASKA'S CLEAN WATER ACTIONS

The Alaska Division of Governmental Coordination should be required to report to the Legislature any plans to implement programs that are not authorized by statute. The public and industry groups should have the opportunity to comment on new programs that do not follow adopted regulations. Programs such as the Alaska's Clean Water Actions that are not authorized by the Legislature and do not have a criteria-based approach should be curtailed immediately.

3. DEPARTMENT OF NATURAL RESOURCES

3.1) RS2477 TRAILS

The Legislature should fund a multi-year, multi-agency Capital Project of \$300,000 annually for the Division of Mining, Land & Water (DMLW) to work with the Department of Law and other agencies to aggressively pursue precedent-setting “quiet title” actions, and to preserve the State’s rights. The Governor should aggressively assert “quiet title” to the routes with the best documentation. Furthermore, the State should assert an access route pursuant to Title XI of the Alaska National Interest Lands Conservation Act to test the process and set a precedent.

3.2) EXPEDITED LAND SELECTIONS

The Governor and the Legislature should direct the Division of Mining, Land & Water (DMLW) to aggressively pursue expedited transfer of State-selected lands along the Denali Highway where there is demonstrated potential for mineral development. As identified in the October 4, 2000 DMLW Conveyance Priority List, \$160,000 should be made available for surface management of the 235,000 acres.

3.3) NAVIGABILITY

The Legislature should make funding available to reinstate a centralized, systematic navigability program within the Department of Natural Resources (DNR). Additionally, funding should be made available to the Department of Law to support any “quiet title” actions necessary to secure ownership of submerged lands.

3.4) GEOPHYSICAL AND GEOLOGICAL MAPPING

The Governor and the Legislature should invest \$5 million per year (approximately 15% of what industry spent on exploration in 2000) for the next decade, preferably through foundation funding, in airborne geophysical surveys and complementary geological and geochemical surveys.

4. OTHER AGENCY PRIORITIES

4.1) LITIGATION REFORM

a) **Limiting Public Interest Litigant Status.** The Legislature should modify existing State Statutes to specifically provide that a party bringing a civil action that seeks judicial review of Administrative Agency decisions may not be awarded public interest litigant status and further that the prevailing party in such civil action shall be entitled to an award of attorney fees and costs as in other civil actions.

b) **Disclosure of Funding Sources.** The Legislature should modify existing State Statutes to require that a condition of obtaining litigant status and/or of filing an Administrative Appeal, under regulations, is the initial and supplemental disclosure of the identity and monetary amount of those who provide funding to the entity who seeks litigant status and/or initiates an Administrative appeal.

4.2) REGIONAL ECONOMIC DEVELOPMENT

The Governor and Legislature should appropriate \$250,000 for a two-year Capital Improvement Project administered by the Department of Community & Economic Development, making relevant information available in a marketing format regarding mineral development opportunities in the economically depressed areas around the Porcupine district near Haines, the Duncan Canal and Bradfield regions in the Stikine mining district, and Prince of Wales Island.

4.3) EDUCATION AND RESEARCH

The Governor and the Legislature should appropriate \$50,000 to the Division of Teaching and Learning Support, Minerals and Energy Education Program, as the State’s share of supporting the Alaska Mineral and Energy Resource Education Fund (AMEREF).

4.4) ACCESS AND INFRASTRUCTURE

The Governor and Legislature should encourage an efficient process for approval of permits for road, rail and powerline projects that would help develop Alaska's limited infrastructure. The Governor and the Legislature should ensure that after major projects work through a permitting process over an extensive period of time, there must be a rational way to bring closure to the process and issue a permit.

4.5) RESTRICTING THE USE OF MINING AIRSTRIPS

The Governor and the Legislature should direct the Division of Mining, Land & Water to amend the mining regulations so that when an airstrip is required for access to a specific mining operation, the Plan of Operations will allow the permit holder to restrict the use of the airstrip.

4.6) SCHOOL OF MINERAL ENGINEERING

The Governor and Legislature should provide adequate budgetary support to the UAF School of Mineral Engineering.

PART B: FEDERAL ISSUES OF STATE CONCERN

1) DETAILED GEOLOGIC MAPPING

The Governor and Legislature should encourage the Congressional delegation to seek funding for the U.S. Geological Survey specifically for detailed mapping, including surficial and engineering, as well as bedrock geological mapping of the State of Alaska. Such funding should include cooperative programs between the University of Alaska, the Alaska Division of Geological & Geophysical Surveys and the U. S. Geological Survey.

2) RESOLUTION OF LINGERING WITHDRAWALS

The Governor and the Legislature should urge the Congressional Delegation to request an accounting of Congressional and Administrative withdrawals that no longer have any justification, and seek expedited agency review, transmittal to Congress, and Congressional action. Withdrawals that have the most immediate impact on other activity or commerce should be given priority.

3) ESSENTIAL FISH HABITAT

The Governor and Legislature should work with the Congressional Delegation to limit the authority of the National Marine Fisheries Service to marine waters, and leave management of anadromous fish within state waters to the Alaska Department of Fish & Game.

4) ANILCA PROVISIONS

The Governor and Legislature, through the Attorney General's office, the State's Washington office, and the Congressional Delegation should insist that the federal administration:

- a) Provide access across Conservation System Units (CSU) as required by Title XI of the Alaska National Interest Lands Conservation Act (ANILCA);
- b) Prohibit the creation of additional CSU lands in Alaska as required by Sections 101d and 1326b of ANILCA; and
- c) Exchange mineralized areas from existing CSU under the authority of Sections 103b and 1302h of ANILCA.

FINDINGS AND RECOMMENDATIONS

PART A: ISSUES REQUIRING STATE ACTION

OVERVIEW: The Fraser Institute, an independent public policy organization, is based in Vancouver, British Columbia, with offices in Calgary and Toronto. Each year it compiles a comparative report of the perceived attractiveness for exploration in various geographical areas based on the responses of dozens of mining company executives.

The 2000/2001 Fraser Institute Annual Survey of Mining Companies included 25 major mining companies and 132 junior companies, and compared 35 jurisdictions, including 12 Canadian provinces, 14 states, and 9 countries. The comparisons were based on a "Mineral Potential Index" and a "Policy Potential Index" to create an overall "Investment Attractiveness Index". Factors such as taxation, environmental regulation, labor regulation, socio-economic agreements, and infrastructure are considered in creation of the policy potential index.

Alaska, with a 91% score, stands fourth behind Ontario (100%), Nevada (97%), and Chile (94%) in the Mineral Potential Index. In terms of the Policy Potential Index, however, Alaska is 16th in the field of 35 jurisdictions. This drags Alaska down to 8th overall in the Investment Attractiveness Index.

The report examines factors that are perceived to be deterrents to exploration investment, and Alaska ranks 5th (of 35) in taxation, 9th in uncertainty concerning the administration, interpretation, and enforcement of existing regulations, 13th in native land claims uncertainty, 16th in environmental regulations and in regulatory duplication and inconsistencies, 17th in labor regulation, 19th in uncertainty concerning what areas will be protected as wilderness or parks, 21st in socio-economic agreements, and 31st in infrastructure.

Closer examination of the low score for infrastructure shows Alaska lags behind only Papua New Guinea, Nunavut, Northwest Territories, and Indonesia. Whereas most other states have less than 3% of respondents that perceive infrastructure to be a deterrent, Alaska has 22%.

Although the survey is based on perception, it is often perception that determines exploration investment.

The following recommendations are organized in a modified form from those in years past to focus on the agencies with jurisdiction over the issues brought before the Commission in meetings during the 2001 calendar year.

1. DEPARTMENT OF ENVIRONMENTAL CONSERVATION

1.1) PERMIT EFFICIENCY

FINDING: A key element in marketing Alaska as an attractive and competitive place to do business is the ability to process permit applications in a responsible, consistent and expeditious manner. In the 2001 legislative session, funding was provided for the Alaska Department of Environmental Conservation (ADEC) to reconstitute the qualified core water quality permitting staff. Equally important to adequate funding, the agencies need the flexible management tools necessary to provide responsive, effective, and efficient management of permitting issues.

Permitting delays negatively impact business in Alaska. Delays are often due to staffing shortages creating backlogs for industry project permit review. To help resolve this problem, ADEC has most recently utilized the Department of Natural Resources (DNR) authority for third party contracting through the Large Mine Permit process, and is planning to issue a Request for Proposal (RFP) for in-house third party contractor assistance to assist with permit review. ADEC is also planning to select

one or more individuals/firms that would be available on-call to provide technical assistance to a permitting team regarding risk assessments and monitoring requirements for National Pollutant Discharge Elimination System (NPDES) discharges, and mixing zones for placer miners. Supplementing permanent staff during permit development is a positive step that will allow agencies to respond more readily to the intermittent demands associated with industry growth. Further, it will support the limited number of permanent staff personnel via access to the varied technical and scientific expertise required for responsible permitting.

In some circumstances, permitting delay has been characterized by industry as “procedural duress.” Industry recognizes that permitting review is an iterative process through discussion and supplementing of relative information, public review, comment and response to comment. However, an unreasonable extension of any of these elements can lead to costly and unnecessary delay. At present there are instances where State requests for additional information, and subsequent time extensions, appear to be based on a partial or cursory review. This results in additional time delay through multiple information requests. Further concern is periodically raised regarding extension of public review and comment periods. This practice is detrimental to the agency, to the industry, and ultimately to economic development within Alaska, potentially leading to the loss of millions of dollars in revenue, and related monetary losses in taxes and royalties.

Permitting agencies need to ensure that the permitting process is not unnecessarily extended. Initial permit review should result in a single and complete list of information deficiencies. Additional requests for information should be limited to questions arising out of new information.

The Alaskan industries, Administration, and Legislature can work together to provide responsible and reliable permitting that ensures the protection of the environment and a sound future. For this to happen, we cannot be complacent in trying to improve permitting efficiency through funding alone. All of the recommendations provided must occur in concert for Alaska to fulfill its potential for sustainable and attractive resource development.

THE COMMISSION RECOMMENDS THAT:

- a) The Administration must continue to aggressively search for and find means to accommodate the use of third-party contractors who will work under the core managers to provide permit development support on an as-needed basis and extend these efforts to all types of environmental and resource permitting. The Legislature needs to encourage and support the Administration in this effort
- b) The Legislature should require a periodic permitting status report accounting for agency staff and management.

1.2) WATER QUALITY STANDARDS

FINDING: When municipal water treatment plants or industrial projects require water discharge permits, the Department of Environmental Conservation must insure that the proposed discharge will meet the State of Alaska water quality standards for various parameters. Due to the rapidly advancing science on both the potential environmental effects of these parameters and the changing technology for detecting the very low concentrations, the most appropriate numerical criteria for these parameters keeps advancing.

In 1999, the U.S. Environmental Protection Agency (EPA) approved a new list of water quality criteria that updated many of the numerical criteria. The EPA also responded to the environmental science that had developed over the years and replaced the old total recoverable values with new dissolved criteria.

The Alaska water quality standards need to be updated. The current standards are primarily based on 1985 science. Moving responsively in reaction to the new guidance from EPA, DEC first published a draft intent to adopt the new EPA criteria in October 2000. Yet despite generally favorable feedback received by DEC during statewide meetings last October, no further progress has been made on updating the criteria.

If the State of Alaska desires to have a management philosophy based upon sound science, it must increase its responsiveness to the advancing science and update the water quality standards.

THE COMMISSION RECOMMENDS THAT:

In order to encourage industry to incorporate sound science in its development projects, the State of Alaska, through the Department of Environmental Conservation, must itself respond to advancing science by updating the water quality standards through adoption of the dissolved water quality criteria approved by the Environmental Protection Agency in 1999.

1.3) NPDES ADMINISTRATION

FINDING: Both industry and state government desire to make the permitting process for mining operations in Alaska more efficient, accessible, predictable, and accountable. Other states provide a permitting and regulatory structure that is much closer to these goals than the present structure in Alaska. One key element in these other states is that they have administration over the National Pollutant Discharge Elimination System (NPDES) process, as authorized by the Environmental Protection Agency.

Several objectives would be achieved by assuming administration of the NPDES process in Alaska. First, the process would become more efficient by bringing several existing permits under the common control of the State. This should result in time-savings by allowing the major permits to be developed concurrently. Second, State administration would make the process more accessible for all involved, including the industry, the State, and the general public.

The financial burden of assuming administration could be eased by providing for a phased assumption of the NPDES program. While there is an expense to assuming administration, there is presently a high cost of permitting in Alaska, and an opportunity cost to the citizens of Alaska from project delays. The question is not whether Alaska can afford to assume administration, but whether Alaska can afford not to assume control of federally-mandated regulatory programs.

THE COMMISSION RECOMMENDS THAT:

The Governor should direct the Alaska Department of Environmental Conservation (ADEC) to develop a plan for assuming administration of the National Pollutant Discharge Elimination System (NPDES) program, and the Legislature should provide the necessary funding to ADEC to support this effort.

1.4) MIXING ZONES

FINDING: State water quality regulations that became effective in November 1997 contain a prohibition against mixing zones in anadromous or resident fish spawning areas. This language makes it more difficult to consider site specific conditions, such as the productivity of the spawning

area compared to the potential benefit of a municipal waste treatment plant or industrial project that might require a mixing zone. Without flexibility in the regulation, many projects that could significantly improve the health and welfare of people throughout Alaska may be precluded due to the widespread presence of spawning fish, including resident fish. Prior to promulgation of the latest mixing zone regulations, the Alaska Department of Environmental Conservation (ADEC) considered language that could have allowed mixing zones if either the discharge had no adverse effect on spawning or if all reasonably anticipated adverse impacts were mitigated to the satisfaction of the Department of Fish and Game (ADF&G). This type of discretionary flexibility needs to be incorporated in the regulations so future projects that may be beneficial are not automatically prohibited.

THE COMMISSION RECOMMENDS THAT:

The Governor should direct the Alaska Department of Environmental Conservation and the Alaska Department of Fish & Game (ADF&G) to work with user groups to develop mixing zone regulations that will, at the department's discretion, authorize mixing zones in spawning areas if:

- a) The discharge is not reasonably anticipated to adversely affect the capacity of the area to support present or future spawning activities; or
- b) The discharge is reasonably anticipated to adversely affect the capacity of the area to support present and future spawning activities and the ADF&G has approved a plan to mitigate all reasonably anticipated adverse impacts.

1.5) BASELINE DATA

FINDING: Water quality regulation in Alaska is growing increasingly complex. Often, the Alaska Department of Environmental Conservation (ADEC) is required to make decisions about water quality regulations without Alaska-specific data. Many Alaskans recognize the need to develop sound environmental baseline information. This research should extend to development of appropriate aquatic life criteria for acute and chronic toxicity under Alaska conditions.

THE COMMISSION RECOMMENDS THAT:

The Governor should direct the Alaska Department of Environmental Conservation to work with industry to develop priorities for basic research on topics important to Alaska, such as total dissolved solids and pH, and to develop plans for funding this basic research.

2. DIVISION OF GOVERNMENTAL COORDINATION

2.1) ALASKA'S CLEAN WATER ACTIONS

FINDING: The Alaska Division of Governmental Coordination (ADGC) recently began a program called the Alaska's Clean Water Action that encourages the public to suggest any waterbody in Alaska be listed as "polluted waters" or "at risk" waters. This waterbody program is not authorized by State statute or regulations. Nor are there any scientific research or background studies required for waterbodies to be listed. Once on the list, there is no process to remove a waterbody from the list.

Agencies that have successfully implemented permitting systems may be hindered in permitting activities on or near waterbodies on this new list.

THE COMMISSION RECOMMENDS THAT:

The Alaska Division of Governmental Coordination should be required to report to the Legislature any plans to implement programs that are not authorized by statute. The public and industry groups should have the opportunity to comment on new programs that do not follow adopted regulations. Programs such as the Alaska's Clean Water Actions that are not authorized by the Legislature and do not have a criteria-based approach should be curtailed immediately.

3. DEPARTMENT OF NATURAL RESOURCES

3.1) RS 2477 TRAILS

FINDING: Since 1993 the Alaska Division of Land has researched 1,950 trails proposed as RS2477 rights-of-way. Of these, 620 routes appear to qualify, about 250 need more information, and the remainder may not qualify due to circumstances such as lack of evidence, duplication of existing rights-of-way, or failure to meet the requirements of the RS2477 law.

The State has achieved Quiet Title to the Harrison Creek – Portage Creek Trail (RST 8) in the Circle Mining District. Because the original trail has been moved many times to accommodate active mining since 1976, (the deadline for identification of existing rights-of-way), the State has entered into a consent decree accepting a mutually agreeable 60-foot right-of-way to substitute for abandonment of portions of the existing trail.

This was one of 11 of the 620 “Qualified” trails that was “Certified” as a test case, and was selected for litigation because it had the broadest potential for setting precedent.

The Department of Law and the Division of Mining, Land & Water require funds for this legal effort to file “quiet title” actions in court to determine the validity of the routes.

THE COMMISSION RECOMMENDS THAT:

The Legislature should fund a multi-year, multi-agency Capital Project of \$300,000 annually for the Division of Mining, Land & Water to work with the Department of Law and other agencies to aggressively pursue precedent-setting “quiet title” actions, and to preserve the State's rights. The Governor should aggressively assert “quiet title” to the routes with the best documentation. Furthermore, the State should assert an access route pursuant to Title XI of the Alaska National Interest Lands Conservation Act to test the process and set a precedent.

3.2) EXPEDITED LAND SELECTIONS

FINDING: In 1994 the Commission recommended that the State should seek expedited transfer of State-selected lands along the Denali Highway for the high mineral potential proximal to existing transportation. Subsequently, about 3,000 mining claims have been staked in this area during the last five years for the copper, nickel, and platinum-group element potential, and over \$3 million has been spent in exploration, including detailed airborne geophysical surveys and limited drilling. However, because of the uncertain ownership of State-selected land, the companies involved cannot justify further expensive evaluation of the area.

On October 4, 2000, the Division of Mining, Land & Water (DMLW) recognized the potential of this block, and requested that 235,000 acres of State-selected land between the Richardson Highway and the Maclaren River be added to the Land Conveyance Priority List (CPL). This effort must be pursued.

Furthermore, the State is unable to charge claim rental until the selections are tentatively approved, resulting in an annual loss of approximately \$75,000.

THE COMMISSION RECOMMENDS THAT:

The Governor and the Legislature should direct the Division of Mining, Land & Water to aggressively pursue expedited transfer of State-selected lands along the Denali Highway where there is demonstrated potential for mineral development. As identified in the October 4, 2000 DMLW Conveyance Priority List, \$160,000 should be made available for surface management of the 235,000 acres.

3.3) NAVIGABILITY

FINDING: State ownership of the beds of navigable waters is an inherent attribute of State sovereignty protected by the United States Constitution. At Statehood in 1959, title to the beds of navigable waters in Alaska was vested in the newly formed State.

In 1980, the State established a comprehensive navigability program within the Department of Natural Resources (DNR). This program was designed to respond to federal land conveyances and land management activities under the Alaska Statehood Act, the Alaska Native Claims Settlement Act, and the Alaska National Interest Lands Conservation Act. The basic purpose of the program was to protect the public rights associated with navigable waters, including the State's title to the submerged lands. The program also included monitoring of federal land conveyance and management programs to identify navigability disputes, seeking cooperative resolution of navigability problems through negotiation and legislation, and preparing for navigability litigation.

Budget cuts since 1995 have greatly reduced the ability of State agencies to respond to navigability issues, and to pursue assertions of State ownership of navigable waters.

THE COMMISSION RECOMMENDS THAT:

The Legislature should make funding available to reinstate a centralized, systematic navigability program within the Department of Natural Resources. Additionally, funding should be made available to the Department of Law to support any "quiet title" actions necessary to secure ownership of submerged lands.

3.4) GEOPHYSICAL AND GEOLOGICAL MAPPING

FINDING: Since 1993, State-funded airborne geophysical surveys have covered approximately 8,700 square miles of the State of Alaska's 162,500 square mile land entitlement, at a total cost of \$ 3.32 million. Additional funding has been invested by the state to complete the geologic mapping on the ground that is necessary to allow interpretation of the airborne surveys.

During this same period, the mining industry has invested \$376 million in exploration in the state, and has staked thousands of new claims based on the results of the surveys.

This increased activity was the intent of the surveys and will accelerate discovery of new Alaskan mineral deposits. However, with a land base of 162,500 square miles, much of it chosen for its mineral potential, it will take the State of Alaska another 150 years to survey its land endowment at the present rate of funding.

The costs for the surveys have increased in recent years due to consolidation in the industry, and increased fuel and insurance costs.

THE COMMISSION RECOMMENDS THAT:

The Governor and the Legislature should invest \$5 million per year (approximately 15% of what industry spent on exploration in 2000) for the next decade, preferably through foundation funding, in airborne geophysical surveys and complementary geological and geochemical surveys.

4. OTHER AGENCY PRIORITIES

4.1) LITIGATION REFORM

FINDING: A critical component to resource development in the State of Alaska is insuring that development projects, once permitted by the appropriate State Agencies, can proceed without delay. Unfortunately, groups opposed to development routinely file litigation with the sole objective of either preventing or delaying permitted development. Often, the basis for the litigation is without merit. Under Alaska's current law, such groups, regardless of financial resources or membership composition, can routinely qualify as public interest litigants, in which case there is absolutely no financial downside to them if they lose the litigation. The net result is that there is no disincentive to these groups not to pursue litigation. As a consequence, the State of Alaska as well as industry and developers are forced to defend themselves in lengthy and costly litigation with little chance of recovering any costs or attorney fees even when they prevail in the litigation.

Those groups that regularly oppose resource development are not simply concerned citizen groups but rather special interest groups supported financially by national and/or international organizations whose stated mission is resource preservation. The result of these systematic and orchestrated law suits filed by purported public interest litigants is inhibiting development by escalating development costs, both in terms of real dollars spent on litigation and lost dollars due to delays. Modifying Alaska's existing rules and regulations by eliminating public interest litigant status in appeals of Administrative decisions and by awarding fees and costs to the prevailing party in such litigation ensures a level playing field for all litigants. Likewise, requiring disclosure of funding sources by those who seek to qualify as litigants and/or who seek to file an Administrative Appeal permits those

defending the litigation to know the identity of those who are actually supporting the litigation and the amount of that financial support.

Modification of Alaska's existing public interest litigant rules and regulations is not aimed at preventing litigants from pursuing Administrative Appeals, rather the intent is one of fundamental fairness — ensuring that the identity of those who initiate the litigation are known and that the potential negative consequences of such litigation are borne equally by all parties to the litigation. The objective is not to inhibit meritorious litigation, but rather to inhibit frivolous litigation by ensuring that there is a consequence to those who file and support such litigation.

If responsible resource development is to be promoted and achieved, it is imperative that development projects, once permitted, are not delayed by individuals or entities who choose to pursue frivolous litigation. Modifying Alaska's existing rules and regulations regarding public interest litigants is critical to promoting and achieving responsible resource development in the State of Alaska.

THE COMMISSION RECOMMENDS THAT:

- a) Limiting Public Interest Litigant Status. The Legislature should modify existing State Statutes to specifically provide that a party bringing a civil action that seeks judicial review of Administrative Agency decisions may not be awarded public interest litigant status and further that the prevailing party in such civil action shall be entitled to an award of attorney fees and costs as in other civil actions.
- b) Disclosure of Funding Sources. The Legislature should modify existing State Statutes to require that a condition of obtaining litigant status and/or of filing an Administrative Appeal, under regulations, is the initial and supplemental disclosure of the identity of those who provide funding to the entity who seeks litigant status and/or initiates an Administrative appeal and the amount of such funds during the past two years and during the term of the Administrative Appeal.

4.2) REGIONAL ECONOMIC DEVELOPMENT

FINDING: In many regions of Alaska, mineral development is one of the few sectors that might offer the opportunity for a sustainable economy, to provide family wage jobs, and add to the local tax base.

To stimulate investment by the private sector, the mineral potential, land status, infrastructure, and the constraints on development such as archeological sites or essential fish habitat, should be clearly identified in a GIS (Geographic Information System) database. In addition, communities in southeast Alaska which have been severely impacted by the decline in the timber industry have expressed interest in how they might be able to benefit from the minerals industry.

Based upon the economic deterioration in the region, excellent potential for mineral discovery, and a well-developed infrastructure, good candidates would be Prince of Wales Island, the Duncan Canal/ Stikine mining districts, and the Haines region.

THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature should appropriate \$250,000 for a two-year Capital Improvement Project administered by the Department of Community & Economic Development, making relevant information available in a marketing format regarding mineral development opportunities in the economically depressed areas around the Porcupine district near Haines, the Duncan Canal and Bradfield regions in the Stikine mining district, and Prince of Wales Island.

4.3) EDUCATION AND RESEARCH

FINDING: The “Alaska Resource Kit” which is being used in the statewide public school system, is an excellent program for educating Alaska’s students in the issues and fundamentals of resource development. The program is a cooperative effort between the Department of Education, which developed the curriculum and is responsible for its implementation, and the Alaska Mineral and Energy Resource Education Fund (AMEREF). AMEREF is supported by the mineral and energy industries which annually fund the production and replacement of the teaching materials, ensure the technical accuracy of the material, and organize and distribute the educational kit. The Department of Education, for its part, has funded the salary of a Specialist who is responsible for teacher training and for implementing the program into the school system.

This program provides a broad-based resource education for Alaska’s students which is critical to their understanding of the resource needs of a modern society, and the importance of mineral and energy resources to the economy of the State of Alaska.

THE COMMISSION RECOMMENDS THAT:

The Governor and the Legislature should appropriate \$50,000 to the Division of Teaching and Learning Support, Minerals and Energy Education Program, as the State’s share of supporting the Alaska Mineral and Energy Resource Education Fund (AMEREF).

4.4) ACCESS AND INFRASTRUCTURE

FINDING: When compared to other regions of North America, the mining industry perceives Alaska as lacking available infrastructure to support the industry. (Source: The Fraser Institute Survey of Mining Companies Operating in North America 2000-2001). This lack of infrastructure, including roads, airports, and power transmission networks, increases the costs of exploration, development, and operation of mineral deposits and limits the potential for this industry to grow and help diversify Alaska’s economy.

Many regions of Alaska would realize significant improvements in their economic opportunities and standard of living if infrastructure improvements were completed. Yet public debate about various road or powerline projects often treats these regions as if they were de facto wilderness, when such is not the case.

Much of Alaska is wilderness, with federal wilderness areas comprising 23% of the State, and a total of about 48% of the State is closed to mining. These areas were withdrawn during the previous decades because they purportedly had special characteristics that justified the wilderness or park designation. This large area of Alaska is unlikely to ever have road or powerline development.

If there is to be no development in the extensive areas of Alaska that have already been set aside, then the other areas of Alaska that are not designated as wilderness constitute the land base that must support our society. Even though these areas are often beautiful or wild in their own right, they were not the crown jewels that justified prior withdrawal. Infrastructure development in these areas must be supported and projects that have the potential to significantly enhance the viability of local communities should be encouraged first.

THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature should encourage an efficient process for approval of permits for road, rail and powerline projects that would help develop Alaska's limited infrastructure. The Governor and the Legislature should ensure that after major projects work through a permitting process over an extensive period of time, there must be a rational way to bring closure to the process and issue a permit.

4.5) RESTRICTING THE USE OF MINING AIRSTRIPS

FINDING: In many remote mining camps, the only feasible summer access is by use of an airstrip on, or adjacent to, the mining operation. Unauthorized use of these strips, often by commercial operations, can result in potentially unsafe conditions, and the attendant threat of liability, both to the miner and to the State.

THE COMMISSION RECOMMENDS THAT:

The Governor and the Legislature should direct the Division of Mining, Land & Water to amend the mining regulations so that when an airstrip is required for access to a specific mining operation, the Plan of Operations will allow the permit holder to restrict the use of the airstrip.

4.6) SCHOOL OF MINERAL ENGINEERING

FINDING: The University of Alaska Fairbanks' School of Mineral Engineering offers accredited degree programs for educating mining, geological, and petroleum engineers and conducts applied research through the Mineral Industry Research Laboratory and Petroleum Development Laboratory.

These professional degree and research programs are vital to the continued development of the State's mineral and energy industries, to the jobs and incomes of its residents, and to the public revenues used to support education and other public services.

THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature should provide adequate budgetary support to the UAF School of Mineral Engineering.

PART B. FEDERAL ISSUES OF STATE CONCERN

1) DETAILED GEOLOGICAL MAPPING

FINDING: Although the U. S. Geological Survey (USGS) has produced many regional geological maps at the 1:250,000 scale, there have been very few bedrock and surficial geologic maps, and almost no engineering geologic maps, produced at the 1:63,360 (1 inch = 1 mile) scale for Alaska. Given that the regional maps are compiled from 1:63,360 maps, it would be very useful if the USGS could publish more detailed maps, and supplement existing data with more field mapping programs including surficial and engineering geologic maps

THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature should encourage the Congressional delegation to seek funding for the U. S. Geological Survey specifically for detailed mapping, including surficial and engineering, as well as bedrock geological mapping of the State of Alaska. Such funding should include cooperative programs between the University of Alaska, the Alaska Division of Geological & Geophysical Surveys and the U. S. Geological Survey.

2) RESOLUTION OF LINGERING WITHDRAWALS

FINDING: Many hundreds of thousands of acres in Alaska remain closed to mineral entry due to federal land withdrawals, although the original justifications for the withdrawals may have lapsed. According to the Bureau of Land Management (BLM), there are three basic classes of withdrawals, each of which goes into effect as the Public Land Order (PLO) is published in the Federal Register.

- 1) Administrative: Orders signed by the President, Secretary of the Interior, and other members of the Administration. Examples include Executive orders, Presidential Proclamations.
- 2) Congressional: Acts of Congress that created Military Reservations, ANILCA Conservation System Units, Wild and Scenic River designations.
- 3) De Facto: Examples include State or ANCSA selection applications, hydroelectric project licenses or applications, proposed withdrawals, and wilderness study areas.

Most of the withdrawals in Alaska are Administrative or Congressional, and most of the pursuant PLO, have no expiration date. The BLM is the agency most active in the reviews of the various withdrawals through its land use planning process. Because of limited funding for the past two decades, the review process has become backlogged.

Two examples of withdrawals that impact mining are the 1980 Squirrel River Wild and Scenic River withdrawal, and the 1971 withdrawal for the Trans-Alaska Pipeline System (TAPS) between the Yukon River and Atigun Pass.

After two decades of study, the Alaska BLM office judged the Squirrel River unsuitable for Wild and Scenic River designation, and forwarded that decision to the Washington office for review. The decision would then be transmitted to Congress, which would then have three years to ratify the decision before the withdrawal automatically expired without congressional action, which is normally the case.

The so-called "inner corridor" for the Trans-Alaska oil pipeline right-of-way between Atigun Pass and the Yukon River was withdrawn from state selections by Public Land Order (PLO) 5150 in 1971. This

portion of the corridor has an average width of about 5 miles, and includes numerous pre-existing mining claims.

New Bureau of Land Management regulations have placed several of the placer mines in jeopardy, because a "Validity Examination" will be required before the operations can be issued a permit, and such examinations can take decades to complete. The PLO 5150 also adversely affects access to other state lands adjacent to the corridor.

Except for this segment, the pipeline right-of-way has been reduced to as little as 54 feet. Therefore the security of the pipeline is not an issue, and each withdrawal should be addressed on a case-by-case basis.

THE COMMISSION RECOMMENDS THAT:

The Governor and the Legislature should urge the Congressional Delegation to request an accounting of Congressional and Administrative withdrawals that no longer have any justification, and seek expedited agency review, transmittal to Congress, and Congressional action. Withdrawals that have the most immediate impact on other activity or commerce should be given priority.

3) ESSENTIAL FISH HABITAT

FINDING: Protection of "Essential Fish Habitat" (EFH) is a key component of the 1996 Sustainable Fisheries Act (SFA), which amended the 1976 Magnuson-Stevens Fisheries Conservation and Management Act (MSFCMA).

Under the SFA, eight Regional Fisheries Management Councils develop Fisheries Management Plans for important fish species, and provide this information to the National Marine Fisheries Service (NMFS). The NMFS has defined essential fish habitats very broadly, and throughout the western states has included all waters currently accessible to salmon. All federal agencies involved in any kind of development are required to consult NMFS if their actions "may adversely affect EFHs."

This broad mandate will, at best, slow permitting with a complex consultative process, or in the worst case result in project denial or modifications that effectively prohibit resource development. Thus "Essential Fish Habitat" has the potential to be at least as onerous as the Corps of Engineers 404 "Wetlands" permitting.

THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature should work with the Congressional Delegation to limit the authority of the National Marine Fisheries Service to marine waters, and leave management of anadromous fish within state waters to the Alaska Department of Fish & Game.

4) ANILCA PROVISIONS

FINDING: In order to assure passage of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980, there were several sections included to protect pre-existing rights. Several provisions would allow mineral development on or near otherwise withdrawn land. Title XI addressed access across the Conservation System Units (CSU). Sections 101d and 1326b assured that no more land in Alaska would be considered for new CSU or similar designations. Sections 103b and 1302h provided mechanisms for the Secretary of the Interior to adjust the boundaries of CSU or to exchange lands within them to exclude mineralized areas.

THE COMMISSION RECOMMENDS THAT:

The Governor and Legislature, through the Attorney General's office, the State's Washington D.C. office, and the Congressional Delegation should insist that the federal administration:

- a) Provide access across Conservation System Units (CSU) as required by Title XI of the Alaska National Interest Lands Conservation Act (ANILCA);
- b) Prohibit the creation of additional CSU lands in Alaska as required by Sections 101d and 1326b of ANILCA; and
- c) Exchange mineralized areas from existing CSU under the authority of Sections 103b and 1302h of ANILCA.

APPENDIX A

ENABLING LEGISLATION

Chapter 98
Session Laws of Alaska, 1986
As Amended by Chapter 12
Session Laws of Alaska, 1998

AN ACT

Relating to the Alaska Minerals Commission; and providing for an effective date.

Section 1. (a) The legislature finds that the minerals industries, including metallic minerals, industrial minerals, and hydrocarbons, have traditionally and continue to be the major source of wealth and income in the state.

(b) The legislature further finds that there are major constraints on the continued development of a diverse mineral industry in the state, including the Environmental Protection Agency's effluent guidelines, state water quality standards and improperly classified streams and rivers, restriction on surface access, complex and numerous permitting requirements, and limited access to minerals through mineral closing orders and restrictions on multiple use through state and federal land use plans.

Section 2. ALASKA MINERALS COMMISSION ESTABLISHED. (a) The Alaska Minerals Commission is established in the Department of Commerce and Economic Development.

(b) The Commission is composed of 11 members. The Commission shall be composed of individuals who have at least five years' experience in the various aspects of the minerals industries in the state. The Governor shall appoint five members of the Commission, one of whom must reside in a rural community. The President of the Senate shall appoint three members of the Commission. The Speaker of the House of Representatives shall appoint three members of the Commission. Each member serves at the pleasure of the appointing authority.

(c) The Commission shall make recommendations to the Governor and to the Legislature on ways to mitigate the constraints, including governmental constraints, on development of minerals, including coal, in the State.

(d) The Commission shall report its recommendations each year to the Governor and the Legislature during the first 10 days of the regular session of the Legislature.

Sec. 3. This Act is repealed February 1, 1994.*

Sec. 4. This Act takes effect immediately in accordance with AS 01.10.070(c)

*Note: The Act was amended to extend the life of the Commission to February 1, 2004.

APPENDIX B

ALASKA MINERALS COMMISSION STATEMENT OF PURPOSE

The Alaska Minerals Commission was created by the 14th Legislature in Chapter 38 of the Session Laws of 1986 and was established to make recommendations to the Governor and to the Legislature on ways to mitigate constraints on the development of minerals in the State.

The minerals industry offers the greatest potential of any Alaska industry for expanding and diversifying the State's economic base; for increasing Statewide employment; and for generating new wealth to create businesses and provide revenues for State and local governments.

However, Alaska has a complex pattern of land ownership and management; has overlapping and uncertain regulatory requirements; has unique geographic, geologic and climatic conditions; and has an undeveloped transportation system.

To attract the capital necessary for the exploration and development of new mines; to ensure that mines can be developed feasibly and in a timely fashion; and to ensure that producing mines remain viable-constraints on the industry must be mitigated.

The Alaska Minerals Commission will prepare reports for the First and Second Sessions of the 15th Legislature and the First Session of the 16th. Legislature, recommending to the Governor and to the Legislature the adoption of legislation and the implementation of administrative policy that will best accomplish the statement of policy found in Article VIII, of the Constitution of Alaska:

"It is the policy of the State to encourage the settlement of its land and development of its resources by making them available for maximum use consistent with the public interest."

And the statement of policy found in the President's National Materials and Minerals Report to Congress of April 5, 1982:

"It is the policy of this administration to decrease America's mineral vulnerability by taking positive action that will promote our national security, help ensure a healthy and vigorous economy, create American jobs, and protect America's national resources and environment."

The goals and recommendations of the Alaska Minerals Commission are to assure that the Legislature and the State administration endorse and promote development of a viable mining industry in the State.

APPENDIX C MINERAL POLICY ACT

Sec. 44.99.110. Declaration of state mineral policy. The Legislature, acting under art. VIII, sec. 1 of the Constitution of the State of Alaska, in an effort to further the economic development of the state, to maintain a sound economy and stable employment, and to encourage responsible economic development within the state for the benefit of present and future generations through the proper conservation and development of the abundant mineral resources within the state, including metals, industrial minerals, and coal, declares as the mineral policy of the state that

(1) mineral exploration and development be given fair and equitable consideration with other resource use in the multiple use management of state land;

(2) mineral development be encouraged through reasonable and consistent non-duplicative regulations and administrative stipulations;

(3) mineral development and the entry into the marketplace of mineral products be considered in developing a statewide transportation infrastructure system;

(4) mineral development be encouraged through appropriate public information and education, scientific research, technical studies, and the University of Alaska program involvement;

(5) economic development with respect to the state mineral industry be encouraged with Pacific Rim nations (Sec.1 Ch. 138 SLA 1988)

This publication was released by the Department of Community and Economic Development. Its purpose is to report the findings and recommendations of the Alaska Minerals Commission to the Governor and to the Legislature of Alaska. It was produced at a cost of \$1.30 per copy and printed in Juneau, Alaska. This publication is required by Chapter 98, Session Laws of Alaska, as amended by Chapter 4, Session Laws of Alaska, 1993.