

Alaska State Mining Law

By Steve Borell

While exploration investments are leaving the western United States, Alaska state land offers an alternative place to explore that has the same language, culture and legal system as the lower-48 states. The very reasons for the exodus of exploration investments from the western states, uncertainty over the future of the federal mining law and the increasingly overbearing regulatory system, are generally settled in Alaska.

The opportunities for new mineral discoveries in Alaska are tremendous. State-owned lands cover an area larger than the entire State of California, and most of these lands are open to mining under a location system which is a modern version of the federal mining law. And although operations in Alaska were for many years held to a higher standard than in other states, today the field is nearly level and in several states the requirements are more stringent than in Alaska.

In general terms - Alaska has tremendous opportunities, a system of environmental and reclamation laws that can work, and a state government and a population that want jobs and economic development. Furthermore, there are now six major gold projects in Alaska that within the next 24 months should be in construction and many more that are in various stages of exploration. Now to discuss the lands available and the Alaska mining laws and regulations and how they function.

Alaska's 104 million Acres

At the time of statehood, the State of Alaska was given the right to select 104 million acres from the "public lands" that were then managed by the Bureau of Land Management (BLM). The total area of the state is 365 million acres and at statehood only about 60 million acres had been designated as federal parks, monuments, etc.

Alaska began evaluating and selecting lands with the first million acres being lands to generate revenues for a mental health trust which had been established while Alaska was still a territory. The selection process continued until January 1, 1994 which was the statutory end date for completion of selections. As of today, approximately 90 million acres have been transferred (TA'd, tentatively approved) to the State and processing of the remainder continues. Of the 104 million acres (California's total area is 100 million acres) of state land, approximately 95 million acres are, or once TA'd will be, open to mineral entry (claim staking).

The Alaska Mining Law

The Alaska mining law is a location system and can be summarized as having: self-initiation; 40 acre claims following legal subdivision or protracted survey; claims aligned in cardinal directions but different orientations can and typically are approved; vertical sidelines without extralateral rights; tenure is established when the stakes are placed; filing and recordation must occur within 90 days of staking.

State mining law also contains a provision for staking 160 acre upland prospecting sites that can hold the ground for one year with a one year extension that is nearly always approved. Rules and requirements are the same as for claim except that the prospecting sites must be converted to claims before more than minor surface disturbing activities can begin.

One aspect of State land management law is that lands can be closed to location by administrative order (MCO, mineral closing order), subject to valid existing rights, but remain open to "leasehold location." This can be applied to areas of special sensitivity, close to communities, etc. The location rules and rights are the same for such lands except that the claimant must enter into a lease with the State before more than minor surface disturbing activities can begin.

Another variation involves offshore areas within the state-owned three mile limit. These lands can be obtained through use of OPPs (offshore prospecting permits). The use of the term "permit" here is however a misnomer because once issued, an OPP is actually a tenure right that can become a lease at the discretion of the holder. This entire topic is quite complex and time and space does not allow for a full discussion here.

Claim Maintenance Requirements

The other major area that must be addressed involves the claim maintenance requirements. The State has requirements for: assessment work, an annual claim rental, a mining license tax, and a production royalty. As a side note, the Alaska Miners Association is working hard to establish an exploration incentive program that will allow credits against these items and against State corporate income tax, even though the costs were expensed in the year expended.

Annual assessment work of \$100 per 40 acre claim is required. Work can be performed in excess of the year's requirement and applied to future labor years for up to four years. alternately, payment can be made in lieu of assessment. Assessment work must be filed and recorded.

Annual claim rental is prepaid beginning at \$20 per claim (\$0.50/acre if claim is full 40 acres). This rental escalates to \$40 per claim after five years and then by year 11 it is up to \$ 100 per claim (\$2.50/acre).

A mining license tax (MLT) is payable on all production from State, federal or private lands. This tax is on a net profits basis with a no-tax grace period for the first 3.5 years from when the mine goes into production. If annual net income is

less than \$40,000, there is no MLT. If annual net income is between \$40,000 and \$ 100,000 the MLT rate is 5%. If annual net income is above \$100,000, the MLT rate is 7%. Applying to State lands only, there is also a 3% production royalty that is calculated on the same net profits basis as the mining license tax. This production royalty is payable on all State land production and does not include the 3.5 year grace period. Failure to file and pay this royalty will result in loss of claims.

Further regarding State lands, at any time in the exploration or production process, the claimholder, at his discretion may take the area covered by mining claims to a lease. This lease will have the same rental and production royalty rates as for the claims and will still require annual claim filing and recordation. The lease will also define specific rights of control and tenure that may otherwise be open to conflict with third party claimants or other multiple use users of the State land. Minerals on State lands cannot be patented.

Alaska has a modern mining law based on self-initiation and location of mining claims. This has been a brief look at that law. Times have definitely changed for mineral development in Alaska. The opportunities are tremendous and the attitudes and regulatory climate in the state are greatly improved as compared to the past, and they continue to improve on a yearly basis.

Steven C. Borell is the Executive Director of the Alaska Miners Association which represents all aspects of the mining industry in Alaska. For more information contact the Alaska Miners Association, 3305 Arctic Boulevard, Suite 202, Anchorage, AK 99503, Phone (907) 563-9229, FAX (907) 563-9225