Project F-0[illegible]
Parcel A.S. 31-2-022-1

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Revised - June, 1961 & BLOCKED 64-13031

22793

PERSONAL AND/OR FREE USE APPLICATION AND PERMIT BOOK 81 PAGE 178
Anchorage Recording District

NAME OF APPLICANT: Department of Highways

ADDRESS: 1306 E. 4th Avenue, Anchorage, Alaska

LOCATION AND DESCRIPTION OF LANDS WHICH MATERIALS ARE TO BE REMOVED:

see attached description and plat

TYPE AND QUANTITY OF MATERIAL DESIRED:

1,000,000 cubic yards of suitable road building material

INTENDED USE OF MATERIALS:

to construct and/or maintain a portion of the Seward Highway

Materials to be removed are to be used for the purpose noted herein and none of the materials to be removed hereunder are to be sold or bartered and removal of materials may begin only upon receipt of an approved copy of this permit.

The permittee hereunder agrees to comply with all applicable laws, and with any rules and regulations issued thereunder.

The permittee agrees to indemnify the State against and hold it harmless from any and all claims, demands, suits, loss, liability and expense for injury to or death of persons and damage to or loss of property arising out of or connected with the exercise of the privileges covered by this permit. (Not applicable when permit is issued to Department of Public Works or other State Agencies.)

The permittee certifies that the statements made in this application are true, complete and correct to the best of his knowledge and belief, and are made in good faith.

Signature of Applicant
David S. James, District R/W Agent

This permit is issued for the materials applied for above, but may be canceled if it appears that the permit was issued erroneously. Further, it is revocable at the discretion of the Director of the Division of Lands, at any time, if it appears in the best interests of the State to do so. This permit is issued subject to the following special conditions: (See reverse)

This permit expires Indefinite 19__.

Approved June 11 1964.

State of Alaska
Division of Lands
By:
ROSCOE E. BELL, Director
Title:

The application must be prepared in duplicate and fill

P E R M I T A P P L I C A T I O N

Miscellaneous Land Use Permit

(Lode Claims--Use of Explosives)

APPLICANT: John G. Nesheim (Claims Owner)

Address: P. O. Box 30683
Laughlin, Nv.
89028

Phone: (702) 298 0018

CO-APPLICANT: Ty T. Nesheim (Geologist)

Address: P. O. Box 17454
Boulder, Co.
80308

Phone: (303) 541 9046

Fax: (303) 440 7166

CLAIM STATUS: The mining claims are solely owned by the Applicant.

The Co-Applicant is the son, and heir, of the Applicant. The Co-Applicant is also the consulting geologist for planned exploratory work.

The Applicant requests that routine communications from the Director, be sent to the Applicant. It is requested that correspondence and/or other notifications, that have a limited response time, be directed to to both Applicant and Co-Applicant.

LAND STATUS: The concerned mining claims are located on State of Alaska ground, and, are wholly contained within Chugach State Park.

Further Defined as Follows:

Claim Name	ADL Number	Size
Paige 1	59480	40 acres
Centennial	59481	40 acres

Legal Description:

T 10N, R 1E, Sections 19 & 30, Seward Meridian
(Anchorage Recording District)

cont'd

ACTIVITY PLAN: The anticipated activities, for which permitting is requested, are to be confined to field work of an investigative and evaluative nature. The goal is to expose known, and suspected, mineral occurrences for the purpose of quantitative analyses.

The primary focus will be mineralized quartz veins. However, preliminary testing in the area, indicates the slate and graywacke country rock may contain gold in recoverable amounts. Some small diameter (two inches or less) test holes are planned at selected slate and graywacke exposures. (see drawing AMC-9)

With one exception, the Applicant intends to accomplish the desired excavation and evaluation with lightweight, portable equipment, designated as not requiring permitting, as defined in 11 AAC96.020.

The exception is the use of explosives. As defined, in 11 AAC 96.010, the intended use of explosives requires a permit. Essentially, that requirement is the basis for this permit application.

At certain locations (see drawing AMC-9), the Applicant intends to use conventional explosives (dynamite) as an excavation aid. A detailed explanation, concerning the intended use and storage of explosives, is included with, and is part of, this application.

On site ore processing will be minimal, likely less than an aggregate of ½ ton for all tests conducted. Reduction will be accomplished by small, portable units designed for sample preparation.

The Applicant does not intend to employ chemicals, or mercury, in mineral evaluation, or for any other purposes, at this site, at this time.

No adits or shafts are planned at this time. The maximum depth, of exploratory excavations, is expected to be about six feet, and of proportional width.

Excavations, for which no further need exists, will be back-filled to the approximate original contours. Excavations, that require continued exposure, will be flagged or barricaded, to the satisfaction of the Director.

The Applicant estimates that less than one acre (total aggregate), of surface cover will be disturbed during the planned exploratory work.

An applicable USGS topographic map, and a drawing (AMC-9), are included with this application.

cont'd

TOPOGRAPHY: The claims are located between Anchorage and Girdwood in the area known as Bird Point. The two forty acre claims have a common east-west boundary. The 2640 foot sidelines strike north-south. The lower, (south) end of the southernmost claim, is approximately 12 feet above sea level. At the north end, of the upper claim, the elevation is about 300 feet.

The terrain, at the southern one half of the lower claim, comprises of fingers of country rock, separated by varying thicknesses of humus and soil. The exposed bedrocks, primarily slate and graywacke, trend north-south and converge, to the north, as they rise in elevation to form the foothill of the mountain to the north.

Alder and devils club predominates between outcrops, and wherever else sufficient moisture is available. Birch, cottonwood, hemlock and spruce are common to the area. In addition to sharing the wetter areas with the brush, the trees thrive where known, and suspected, quartz veins provide an aqueduct for water.

As indicated on the drawing (AMC-9), there is one small stream on the claims. There is also a very small spring that originates on the upper claim, flows across the common claim boundary, and joins the stream. The combined flow continues under the Seward Highway and ends in a bog area between the highway and the Alaska Railroad.

The stream was utilized as a water source for the Alaska Railroad section house at Bird, before that structure was destroyed by fire several years ago.

In recent years, the flow, in both the stream and spring, seems to have diminished.

During a six week period in 1993 (July & August), there was no surface water in the stream drainage. During the same period, the spring became barely a seep. However, due to the character of the drainage beds, considerable water may have been flowing under the surface of each.

As previously stated, the mining claims are within Chugach State Park. There are no habitable structures (or camp grounds) within a 1-mile radius of the claims.

There are two uninhabitable structures located on one of the mining claims. An ALASCOM microwave tower, and it's support building, are on ADL 59481 adjacent to, and south of, the Seward Highway as shown on drawing AMC-9.

cont'd

TOPOGRAPHY: (continued)

The Seward Highway crosses ADL 59481, in a general east-west direction, as do two Chugach Electric lines. They are, the high voltage transmission line and the low voltage local service line.

Also in an east-west direction, an eight inch pipeline crosses the claims. This buried line follows, generally, the common boundary of the two claims. The line (owned and operated by the Military) is used to transfer petroleum products from Whittier to the military bases near Anchorage.

The location of the three utility lines, and the highway, are shown on drawing AMC-9. Claim boundary lines do not cross the ARR tracks. Corner No. 3, of the south claim (ADL 59481), is located at the former site of the Bird section house, on the north side of the railroad tracks.

Access to the claims, (other than that which is provided directly from the Seward Highway) is by an unimproved dirt road. This road, about one half mile in length, was constructed, incidental to the pipeline construction, in 1967. In addition to the Applicant, the road is used, periodically, by the Division of Parks and Outdoor Recreation, Chugach Electric, and representatives of the Defense Fuel Region, Alaska (pipeline).

The road has also seen use by certain aging Hippies, residing around Bird Creek, who use the area as a substitute for the Girdwood land-fill. Those same malcontents have found the road a convenient conduit to a secluded area, where they can demonstrate their societal frustrations by baiting bear, poaching moose and bisecting rabbits with 12 gauge shotguns.

The access road is also shown on the drawing AMC-9.

Travel, over the access road, will be by four-wheel-drive pickup truck. The incidence of travel is estimated to be five or six round trips per day.

No particular maintenance or improvement to the access road is planned for the 1994 season.

NOTE: The State of Alaska, Department of Transportation, has an upcoming project that will impact the access road. Earlier correspondence, with DOT, indicated that a minor realignment of the highway, will occur where it crosses the lower claim. The access roads point of exit/entrance will, undoubtedly, change at that time.

cont'd

TOPOGRAPHY:
(continued)

The planned exploratory work, along with that already accomplished, will be used to determine where the initial ore extraction should occur. When that has been determined, and the new location of the access roads juncture with the highway is known, extensive improvements will be considered. The Applicant will then request permission, from the Director, Division of Parks and Outdoor Recreation, to limit road access. In other words, construct a gate.

The road has provided access for over 25 years with virtually no upkeep or improvements (other than brushing). In fact, the Applicant reduced the brushing effort, to barely adequate, because the more passable the road looked, the more it was used. The aforementioned entities, having a legitimate interest in the area, generally use the road during the summer season. Those individuals, of questionable character, utilizing the road in their personal pursuits, seem to pick times when the roadbed is water saturated, (muddy) and subject to considerable damage.

EXPLOSIVES: The decision to use explosives was arrived at after careful consideration. Some of the locations, where testing is desired, are on steep ground where tracked equipment would be required. At other locations of interest, the desired work could be accomplished with wheeled equipment. However, in most instances, getting either type of machinery to the test site, would involve considerable clearing, with resultant damage to the trees and ground cover.

The planned exploratory work may, at some locations, demonstrate a future need for more ambitious excavation. For the present situation, it would seem counterproductive to create a multitude of paths, leading to as many test pits, some of which will inevitably be barren.

The primary consideration, against the use of explosives, is that of security. Unless put under 24 hour-a-day guard, it would not be safe to store explosives at the claims. In a very remote area, it might be feasible to leave explosives unattended. However, this particular location is somewhat unique. Once an individual is on the access road and up the hill, that person is, for all practical purposes, in a remote area. Relatively close to the Seward Highway, but very well hidden from it.

At the same time, the claims are a scant 30 minutes drive from Anchorage. (much closer to Bird Creek).

cont'd

EXPLOSIVES: (continued)

To preclude the possibility of theft, (or intentional or accidental detonation by others), all explosives employed at the claims are to detonated the same day delivery is taken.

If, for some unforeseen reason, (emergency situations, storms, etc.) the explosives can not be expended on the same day they arrive at the claims, they will be retained at the claims and kept under constant guard until they can either be used or destroyed.

Purchases of explosives are expected to be limited to one 50 pound box.

No heavy charges are anticipated. Of course each individual circumstance, presents a different set of needs, but the estimated use of dynamite will be from ½ to six sticks per detonation. Simultaneous detonation's are not planned.

The locations of Chugach Electric's overhead lines are obvious. The Applicant is aware of the exact location of the buried petroleum products line. Due caution will be taken to protect those utilities.

As previously stated, the ALASCOM communications facility is located south of the Seward Highway. No blasting is planned south of the highway and that north of the highway will be no closer than 500 feet to the highway.

The blasting areas will be identified by signs and protected by flag-persons as appropriate.

The Applicant has an Explosives Handlers Certificate of Fitness, issued by the Alaska Department of Labor. Other persons, working directly with the explosives, will be similarly licensed and/or certified.

STATE OF ALASKA / WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

P.O. BOX 107016
ANCHORAGE, ALASKA 99510-7016
PHONE: (907) 762-2170

DIVISION OF MINING

3700 AIRPORT WAY
FAIRBANKS, ALASKA 99709
PHONE: (907) 451-2760

March 9, 1994

Mr. John G. Nesheim
P.O. Box 30683
Laughlin, NV 89028

Re: Application for Miscellaneous Land Use Permit, State Mining Claims, ADL's 59480-59481;

T.10 N., R.1 E., Sections 19, 30 Seward Meridian; Bird Point on Turnagain Arm, South of Anchorage;

Dear Mr. Nesheim:

We received your application for a Miscellaneous Land Use Permit (MLUP) to conduct exploratory trenching on your mining claims by blasting test holes. Thank you for notifying us of your proposed activities.

In reviewing applications for permits to conduct such activities, the state utilizes a coordinated permit application process referred to as the Annual Placer Mining Application (APMA) process (fact sheet attached). Even though referred to as a placer mining application, it also applies to lode exploration activity.

In reviewing your application, I found it did not provide sufficient information to distribute to those state, federal, and local agencies involved in the permitting process -- additional information and action are required. Outlined below are the areas requiring additional information or action on your part before we can accept the application as complete and continue processing your application. Please provide the following:

1) A completed Annual Placer Mining Application (current 1994 copy attached). Please attach your typed work plan to this application. In addition, please provide maps of your claim locations and work plans at a scale that can be copied and distributed to the permitting agencies -- see front page instructions, 8 ½ x 11 inch size preferred. If reducing your map to a copy machine size is not practical, please provide 24 copies of your blue line map for distribution purposes.

2. Your project is within the boundaries of the Alaska Coastal Management Program (ACMP) and will require a coordinated coastal consistency review before any permits can be issued. Please sign and return the Coastal Certification Statement included with your application so that this review can be initiated.

3. Please provide additional information as to what equipment you will be utilizing to excavate, backfill, and reclaim the six foot deep trenches after blasting is complete and the samples collected. All surface disturbances must be reclaimed.

4. Considering that bedrock is well exposed on the claims and samples may be easily collected without blasting, there is some concern as to why blasting is being proposed. Generally, the blasting of trenches to collect samples for analysis is an advanced exploration method to prove up anomalies identifed by previous sampling methods. The State is not prepared to approve surface blasting in this area until you can provide complete evidence of adequate geologic mapping, surface sampling, soil or rock geochemistry, and/or surface geophysics to justify surface disturbances of this nature. Upon request, any such information provided will be held in confidence. Random blasting of pits and trenches on the hope that mineralization will be exposed is not an acceptable method of surface exploration. No permits to conduct surface blasting will be issued until you clearly demonstrate to the state that you have completed adequate and proper mineral exploration procedures and identified sufficient mineral anomalies to justify open pit testing. Please provide this information for each pit you intend to blast open.

5. As you are well aware, there are several easements and rights-of-way which cross your claims. The relationship of mining rights and other valid surface rights issued by the state is addressed in AS 38.05.130 and 11 AAC 96.140(10). These state laws state that a locator may not conduct mineral exploration activity on land, the surface of which has been granted or leased by the State of Alaska, or on land for which the state has received the reserved interest from the United States until you have made an agreement with the surface lessee for settlement of damages which may be caused by such activity. Before we can approve the blasting activity, you must provide us with letters of surface damage agreements or at least letters of non-objection for all surface lessees on your claims.

6. Conducting blasting in the State of Alaska requires an Alaska Blasting Certificate. Please provide a copy of your current state blasting certificate or a copy of the certificate of the person that will be conducting the blasting operations.

7. Public safety is a concern with a proposed blasting project crossed by both the Alaska Railroad and one of the most heavily utilized highways in the state. Please provide absolute details of how you intend to protect public safety and control flying debris from landing on the Alaska Railroad and the Seward Highway. You should also address how vehicles traveling the Seward Highway will be protected from flying debris.

In the application, you present some objections to the general public utilizing the surface of your claims. As provided in 11 AAC 86.145, please be advised that your surface rights associated with these claims are limited to only those activities necessary for exploration and development of your mineral rights. A locator does not have exclusive use of the surface of the location and may not restrict public access to the surface without specific approval from the Division of Mining.

Your application and personal check # 0819, in the amount of $100.00 is returned. As soon as we receive the above information and completed application, we will distribute it to all state and federal agencies involved in the Annual Placer Mining Application process. The Division of Governmental Coordination will coordinate the coastal consistency review for the project. Please give me a call at (907) 762-2160 if you have any questions or would like additional information on the permitting process.

Sincerely,

Judd Peterson
Chief, Permitting/Field Operations

Enclosures
1. APMA w/Info Sheets
2. MLUP Apln w/Personal Check # 0819

cc: Al Meiners, Division of Parks
Carol Jo Sanner, DOTPF

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING AND WATER MANAGEMENT

TONY KNOWLES, GOVERNOR

☐ 3601 C STREET, SUITE 884
ANCHORAGE, ALASKA 99503-5935
PHONE: (907) 269-8652
Fax: (907) 563-1853
E-Mail: kerwink@dnr.state.ak.us

April 3, 1997

John Nesheim
P.O. Box 30683
Laughlin, NV 89028

Re: Mining Claims Paige 1, and Centential, ADL's 59480 and 59481.

Dear Mr. Nesheim:

1 Al Meiners, superintendent of Chugach State Park, copied me on the letter you sent him dated February 28, 1997 and the letter he sent you dated March 5, 1997.

2 In your letter you say you are "not opposed to the planned development," but concerned how it will impact your mining claims.

I pulled the casefiles for your two claims and reviewed the information contained in the records.
3 Of most significance is the correspondence from the last several years between yourself and DOT and DNR, beginning with the correspondence dating back to your March 4, 1994 letter to myself.

I note that you have had these claims for almost 30 years (they were located in November 1967). The records indicate that during this time you have never filed a mining plan of operation for the
4 purposes of conducting exploration or mining activity, other than the application you filed in March '94, and included with the letter you sent me. It appears the only work you have done on the claims all these years is annual labor. As you may recall, the division responded to your letter and permit application several days later (on March 9, 1994) indicating that it did not provide sufficient information for processing, and that additional information would be necessary as provided on the department's APMA form. We also had a concern about your blasting plans adjacent to the Seward Highway. The division never received a completed application from you.

I further noted that most of the correspondence from you following your March '94 letter primarily dealt with reasonable compensation for locatable minerals that "become inaccessible or
5 impractical to mine as a result of the highway project." I also noted in your May 21, 1994 letter to DOT that your "intention" for the claims was "to develop a tourist oriented business" that would "include a restaurant, gift shop, lounge and an Alaska mining museum." As you now know, under the law, you cannot do this on mining claims.

Since the correspondence in 1994, the Alaska Supreme Court ruled (March 29, 1996) on an appeal (copy attached) from a mining claimant that is similar to your situation. In consideration of the Supreme Court's opinion concerning this similar situation, and the fact that you rejected DOT's offer to stockpile rock containing ore, I do not feel that you have an argument for compensation, even if it were determined what the value of the ore, less mining cost were.

You have had these claims a long time, and you have known about the planned construction since January 1991 according to a letter in your file you sent to DOT. In your letter to me in March '94 you state "my efforts to develop a plan of operations, for these claims, for 1994, were seriously compromised by the Alaska Department of Transportation (DOT)."

The road construction in the area of your claims has not started as of this date, however it is expected to begin later in the year. You have known about the construction for quite some time, and the primary areas on your claims that would be impacted, yet the division has not seen any plans to ever mine the ore in these areas which you claim would be profitable. You will probably note that the Supreme Court noted this also in the case attached. As a professional mining geologist myself, if I were aware of a profitable ore deposit, that I had rights too, that required mining before other planned surface activities by the land owner which would negatively impact the mining operation and profits, I would try my best to get permitted so that I could mine before circumstances prevented it. There is no indication you considered this.

If you have any questions, feel free to contact me.

Sincerely,

Kerwin Krause

Kerwin Krause
Mineral Property Mgr.

Attachment

cc. Al Meiners, DNR-DOPOR
Sam Bacino, DOT-ROW
Jules Tileston

May 2, 1997

Re: Mining Claims ADL 59480 & 59481
& Highway Relocation/Chugach
State Park Development Plan

Certified Mail
P 998 586 219
Return Requested

Mr. Jules Tileston, Director
Division of Mining & Water Management (DNR)
3601 C Street, Suite 800
Anchorage, Alaska
99503-5935

Dear Mr. Tileston:

During the past six years I have received numerous letters from the Alaska Department of Transportation (DOT) and from the Division of Parks and Outdoor Recreation (DOPOR). Of course that correspondence was relative to the indicated subject of this letter.

While I may not have agreed with the contents of those letters on each and every occasion, I found them prepared in a straightforward, intelligent and professional manner.

Between 1994 and the present I have twice received letters from the Division of Mining and Water Management. On both occasions I found a sharp contrast between those letters and all others received from either DOT or DOPOR.

The first, prepared by Mr. Judd Peterson on March 9, 1994, was in response to a Miscellaneous Land Use Permit that I submitted.

The second letter, just recently received, was written on April 3, 1997 by Mr. Kerwin Krause.

In both cases I found the correspondence offensive. As previously stated, I may not agree with the contents of various letters and documents received from Departments and Divisions of the State of Alaska. That disagreement does not, however, diminish my admiration and respect for correspondence presented in a professional manner, without addition of personal observations and editorials.

I would like to offer some specific points of objection to the most recent letter, that of Mr. Krause, and then I will do the same of Mr. Peterson's.

I will be referring to pertinent letters and documents, copies of which are enclosed.

In the fourth paragraph of his letter Mr. Krause makes a point of mentioning how long I have held the mining claims without developing them. Frankly, Mr. Tileston, until he can recite, chapter and verse, an Alaska Statute or regulation to the contrary, I feel it's none of Mr. Krause's business how long I have had the claims. Nor should it be his concern what I do with them as long as it follows applicable regulations and laws.

The Alaska Legislature saw fit to implement graduated annual rental payments. That works for me and when the time comes for another increase I will, again, pay additional for having the claims longer.

If Mr. Krause has a concern of timeliness, why did he not challenge the Free Use Permit (FUP) that languished, unused, in DOT archives for 30 years. Having need of it for the Seward Highway project, DOT drug it out, dusted it off and called it valid.

If an advocate of mining rather than an adversary, I would think Mr. Krause would show more concern of the age of an unused and then resurrected FUP, than of how long I have had the claims.

Mr. Krause was not a stranger to that FUP. We discussed it in 1994 when he said the Division of Lands couldn't locate it. I suspect Lands had closed that file many years previous due to the age of the FUP and the fact that the concerned ground had become part of Chugach State Park.

The FUP, already thirty years old in '94, covers part of my claims. It was, obviously, a single use permit. Issued just after the 1964 earthquake, it was requested by the Department of Highways to provide a material source for reconstruction the Seward Highway between Bird Point and Inghram Creek.

The rest of paragraph four comments on my permit application and blasting plans. I'll address those concerns in my comments of Mr. Peterson's letter.

The text of paragraph five is redundant. Mr. Krause has read my letters to DOT and knows that I recognized I couldn't operate a tourist facility within claim boundaries. If he had cared to be straightforward, and not divisive, he would have added that I also indicated there would be advantages, under the same tourist concept, in processing the ore off the claims on private land.

I don't understand why he even included paragraph five, unless it provided enhancement for an obvious argumentative attitude.

If you take exception to the forgoing, just refer to paragraph six of Mr. Krause's letter.

As you will note: Before completing his letter, Mr. Krause stated that he is "a professional mining geologist". I'm so glad he shared that with me. I didn't know there were any other kind. Accepting that as fact, Mr. Krause should be the first to recognize the distinction between surface and subsurface rights.

Mr. Krause presents a decision by the Alaska Supreme Court that settled a Complaint by a miner taking exception to a power line constructed over his claims. The Alaska Power Authority (APA) was Permitted by the State of Alaska to construct two towers on Mr. Parker's claim. The only adverse impact to Mr. Parker was probably limited to the area the towers occupy and the effect the lines may have on his trying to employ electric blasting devices.

Last year Chugach Electric relocated it's power lines crossing my claims and built new towers. There was no objection from myself in regard to that work.

Previously, ALASCOM constructed a micro-wave facility which was partially off highway right of way and on ADL 59481. Again, there was no objection on my part.

Conversely, the DOT plans on constructing a new right of way over mining claim ADL 59481, while retaining and utilizing a portion of the existing highway. That will require excavation of subsurface material. The DOT also has a FUP, valid or otherwise, that permits the removal of up to 1,000,000 cubic yards of rock and fill. Some of the FUP overlaps my mining claims and material to be removed contains locatable minerals to which I have laid claim.

DOT plans show additional material removal, in excess of right of way needs, that is outside the FUP area but within the boundaries of ADL 59481.

It appears, at least to me, to be an "apples and oranges" comparison by Mr. Krause. I can't help but wonder why he provided the Court's decision unless it was meant to intimidate or to provide a platform for what I consider an authoritative approach to communication.

At least, in reading the Decision (Page 7, last paragraph) I can better understand his making a point of claim inactivity.

Is the Supreme Court's Decision a convenient reinforcement for a problem Mr. Krause already had with claim inactivity? Or after the Court had made it's determination did Mr. Krause thumb through it searching for something to support his contention that I have no rights?

Referring to the same paragraph: Mr. Krause equates my objection to the stockpiling of ore to giving up my rights for compensation.

Just in the Civil Division alone, the Alaska Attorneys General has more attorneys than many rural towns have residents. Seems likely one of them might have an opinion based on reasonable interpretation of the law. It would be interesting to learn the real rationale of Mr. Krause's "Determination".

My final comments on Mr. Krause's letter are directed to the last paragraph appearing on Page 2.

It seems inappropriate that an officer of the State, charged with interpreting and enforcing mining laws and regulations, would use State time, facilities and resources to offer unwanted personal observations. Not being employed in Social Services, I doubt very much that his Position Description includes the imposition of his uninvited personal views and his prejudices.

Frankly, I have no interest in learning what Mr. Krause would do if he owned my mining claims. I resent and reject his comments.

And, with that in mind, I would like to make my own observation of the general tone and theme of both the Krause and Peterson letters.

In each instance I made a mental comparison: I wondered if their writings were directed to major mining entities, such as Newmont Mining, AMAX Gold Inc. or Anaconda Copper Company, if they would contain the same assumptions, inappropriate advice and personal observations. Somehow, I think not.

The application for a Miscellaneous Land Use Permit, submitted in March, 1994, was prepared in accordance with guidelines supplied by the DNR Factsheet dated 11/92 (revised). Entitled: "Division Of Mining Permits And Permit Process For Lode Mining Operations" it was the most recent guideline to permit application I was aware of.

The permit was prepared in the suggested format. In previous years I'd been told lode applications were to be submitted on the Annual Placer Mining Application form. First it was the placer form, then it was the format suggested in 1992 and then back to the placer form.

I will admit that Mr. Peterson's letter was received with some disgust with the Divisions apparent vacillation. I'm required to supply the Division with my current address. I would like to think the purpose is not just regulatory but would be utilized for informative services as well. Surely, significant changes in regulations would fall into that category.

I'm well aware that commencing with the Jay Hammond administration there has been a general discouragement of small mining operations in Alaska. In particular lode mines. However, with all due respect to your management of the Division, it would seem that with all the resources available, Alaska should be able to implement a permitting process designed solely for lode operations.

The lack of a permitting process formulated for the uniqueness of lode mining seems an additional discouragement of that activity.

I was not upset with Mr. Peterson quoting the applicable Statutes and explaining the permitting requirements. What I objected to, was the garbage that went with it.

The first line in paragraph 4 is a case in point. Assuming that Mr. Peterson is also a geologist, that was a stupid remark.

Too bad he is not still around, he could take a can of spray paint to the claims and mark the mineralized areas for me. However, I anticipate that Parks might object to his decorating the greywacke and slate country rock. With the exception of one natural cows-face exposure, he won't find the veins unless I have already uncovered them.

The following is quoted from a letter I wrote on November 5, 1993 to Mr. John Fritz of DOT/PF, Division of Design & Construction.

> "The mineral bearing veins at Bird Point are hydrothermal in origin and quartz in content. The quartz contains pyrite and other easily oxidized minerals that caused the veins to erode faster than the country rock. With the strike of the veins being, generally, in the direction of the natural water flow, from the mountains to the north, the depressed veins became channels for run-off water, which, of course, caused deeper erosion of the veins."
>
> "In viewing aerial photographs, in stereoscope, I can trace known, and suspected veins down-slope under the highway and railroad to the point where they go under Turnagain Arm."

With the one noted exception the mineralized veins are buried under several feet of overburden.

Gives rise to the question of why one would offer swivel chair observations, regarding property of which they obviously have no knowledge, to someone with a quarter century exposure to it.

Why would Mr. Peterson include the first line of paragraph 4? It's obviously not true. What was the message and who was it intended for? Was it a case of asserting authority or trying to intimidate the applicant. Or was it intended to influence other departments or divisions with slanted, untrue and biased correspondence?

Had Mr. Peterson had been corresponding with a major mining firm would he have presumptuously informed them of in-field conditions, of which he had no knowledge, and then questioned their exploration approaches?

Again referring to paragraph 4: In my application I addressed the use of explosives. I also stated that I held an Explosives Handlers Certificate of Fitness. It was issued in 1961 by the Alaska Department of Labor. Well before the terminology was changed to Alaska Blasting Certificate.

Steroscopic analyses of subsurface anomalies is an accepted method of exploration. I find the following, written by Mr. Peterson, as being offensive and unnecessary.

> "Random blasting of pits and trenches on the hope that mineralization will be exposed is not an acceptable method of surface exploration."

Nobody in their right mind would go about indiscriminately sticking dynamite in the ground in the hopes that something of interest would be blown out. Give me a break!

As to the inherent danger always present with explosives, I thought I had covered that in my application. [Dynamite charges from ½ stick to six sticks and none closer than 500 feet of the Seward highway.] Obviously, depending on location and size of charges, blasting mats or other control methods would be employed. My purpose was not to blow "pits" (implies craters) in the ground but to loosen up hardpan so it could be shoveled. Of course Mr. Peterson didn't know that but I sincerely do not believe knowing would have made a difference in his response.

The tone of Mr. Pederson's letter is argumentative and arbitrary. It seems intended to purposely complicate the permitting process. It contains untruths, unfounded assumptions and distortion of facts.

True, my exposure is limited to two letters. However I sense a bias against miners being expressed by some of your past and current staff.

I have made the accusation of argumentative and arbitrary and now I will provide an example.

In my application for a Miscellaneous Land Use Permit I described some poaching and illegal dumping problems relative to the access road at the claims. I further stated that following construction, when the alignment of the access road was determined, I would be looking to gate it.

In the first paragraph of page 3 Mr. Peterson cites the applicable Statute, regarding surface rights, and enlarges on same in the now familiar authoritative presentation. Six lines could have been reduced to:

> "Limiting access will be approved after receiving authorization from the proper authority."

While I felt the gate a good idea it wasn't mine. In 1985 I met, at the mining claims, with DOPOR Deputy Director Russell Harding and Chugach State Park Superintendent Bill Garry.

The stripped-down vehicles dumped over the side of the access road were obvious. I related some of the problems of moose poaching and careless handling of firearms. Close to the upper level of the access road, an above-ground blind had been constructed using three adjacent trees. A nearby depression had been filled with bear-bait.

Mr. Harding posted his State business card on one of the trees as a reminder that the area was a State park. With their approval I returned two days later, removed the bait and cut down the trees.

It was on the day of this visit that both Mr. Harding and Mr. Garry suggested my installing a gate on the access road.

The gate was Parks idea, not mine. Granted, when Mr. Peterson wrote the response to my application he was not aware of the circumstances. Even if he were I doubt very much if it would have changed the content of his letter. In my application I stated, very clearly, that I would seek approval from the Director, Division of Parks to limit access.

Mr. Peterson's letter leaves the impression that only the Division of Mining is empowered to grant approval for a restriction of public access. That would seem to be a responsibility of the Division of Lands. Or more pointedly, in the subject case, a determination to be made solely by the Division of Parks.

Unless embarking on another argumentative and arbitrary exercise, why would the Division of Mining have concern if I entered into a limited access agreement with Parks?

As an anticlimatic footnote: Visit the access road in question and you will find a gate. It was installed at the direction of Division of Parks. I'll wager they didn't need Division of Mining approval to do so, any more than they needed mine.

Mr. Krause makes a point of questioning why the 1994 Miscellaneous Land Use Permit was not re-submitted

I think that would be obvious. The lines of text in Mr. Peterson's letter, and the space between them, sent a crystal clear message.

The Division of Mining position was that of an adversary. There was, for whatever reason, opposition to issuing a Miscellaneous Land Use Permit for these particular claims.

Any doubt I may have had of that impression in 1994, was laid to rest upon receipt of Mr. Krause's letter.

Without elaborating any further than I have, I'll say that I am not psychologically equipped to engage in the permitting process under prevailing conditions.

There are professional firms prepared to perform that function and when I elect to proceed, one will be engaged.

Sincerely,

John G. Nesheim

Enclosures

Krause ltr 4/3/97
Peterson ltr 3/9/94
Alaska Supreme Court Opinion
Application, Land Use
FUP, Highways, 1964

cc. Al Meiners, DOPOR
Sam Bacino DOT
Mary Nordale,

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF MINING AND WATER MANAGEMENT

Kerwin

TONY KNOWLES, GOVERNOR

3601 C Street, Suite 800
Anchorage, ALASKA 99503
Phone: (907) 269-8600

J. G. Nesheim
P. O. Box 30683
Laughlin, NV 89028

May 13, 1997

Re: Your letter of May 2, 1997 (ADL 59480, 59841)

Dear Mr. Nesheim:

You indicate the letters from Mr. Peterson and Mr. Krause were offensive. I am sorry that you take offense to that correspondence. Since the letter from Mr. Peterson predates the time that I have been with the Division, I am not in a position to comment. I did, however, have the opportunity to review the recent letter from Mr. Krause before it was sent.

The following is a reaction to your letter in the same sequence raised:

- *It is none of the state's business on how long these two claims have been held by you because the state has a graduated fee system based on the age of the claim.* (Mr. Krause has the responsibility of assuring that the correct mining claim rental is paid. Therefore, he is generally familiar with how long a claim has existed. He also is the person that has a role in the authorizations for mine development and would be aware if any significant mining operation had, or was about to, take place on mineral properties in Alaska. The age of the claim and the extent of mining on a claim group are also indications of the mineral value of those claims in the event there is a dispute between the claim holder and other appropriate uses of state non-locatable resources.)

- *Mr. Krause, as an advocate of mining, should challenge the highway free use permit to support your mining claim.* (As you should be aware, Mr. Krause has no jurisdiction over the disposal of gravel since it is not a resource covered by the Alaska mining laws or regulations. Removal of gravel, rip-rap or other non-

locatable materials from a properly located and maintained mining claim is generally not considered a conflict since the mineral estate is still there. Further, both the state highway and the railroad existed when you located your two mining claims.)

- *Mr. Krause has a redundant writing style and you do not understand the reason for paragraph 5.* (Paragraph 5 summarizes pertinent information in our mining claim files for your two claims. If it is inaccurate, we would like to understand your point of view. Our intent is make it very clear that mining claims are for mining and that other uses such as a tourist business are not an appropriate "mining operation" authorized under the Alaska mining law and regulation. A non-mining use requires the approval of the surface owner, in your case the Division of Parks and Outdoor Recreation. Although you indicate that you are fully aware that locating and maintaining a mining claim does not give you this right, there have been recent instances where people have established recreation cabins and permanent homes on a presumption that they also had complete ownership of the surface. Accordingly, we are taking the extra step to remind mining claim holders that their claims are for mining only unless otherwise expressly approved by the surface owner. Similarly, a suggestion that the construction of the highway project could lead to you being compensated for not being able to conduct a tourist business was questionable. Since you have chosen to not submit a completed application to mine there are valid questions about the effect of the current projects on your two mining claims that you also suggest you may be due compensation.)

- *Mr. Krause should not have told you he was a professional geologist.* (Comment noted, and yes he is fully aware of the difference between the surface and subsurface estates and the rights, privileges, and responsibilities of each.)

x *The Parker decision relates only to transmission towers such as placed by Chugach Electric Association and is "apples and oranges because you have not objected to placement of electric transmission lines by Chugach Electric Association or a repeater by ALASCOM."* (The Parker decision addresses the issue of compensation for the use of the surface of an existing mining claim where there has been no mining activity and there were no plans available to show that a mining operation was actually planned. We were simply providing you a recent legal decision that appears to have a bearing on your past inference to getting compensation for an unspecified loss of mineral value.)

- *Mr. Krause's letter, as an officer of the state, is inappropriate and improper use of state time.* As noted elsewhere, there has been an increasing use of the state mining laws and regulations for purposes other than mining. Mr. Krause, as an officer of the state charged with administration of mining law and regulation, has every responsibility and obligation to make sure that mining claim holders are fully aware of their rights, and how far those rights do or do not extend to non-mining matters. Simply put, Mr. Krause provided you information that both he and I considered important you know.

- *The Division of Mining and Water Management is an adversary rather than a supporter of your right to mine.* (We sincerely look forward to the day that you are ready to develop and economic mining venture in Alaska. Our job is to promote and encourage viable and environmentally responsible mining and all the members of this organization take this task seriously. This sometimes means that we may appear to be the bearer of bad news to claim or lease holders that are not, and have not, shown any effort to actively mine.)

In summary, I again apologize if you believe our advice to be offensive as it was not our intention to insult, only to inform! With specific reference to Mr. Peterson's letter, we will be happy to sit down with you, or any professional consulting firm you choose, when you are ready to mine.

Sincerely,

Jules V. Tileston
Director

cc: K. Krause

THE SUPREME COURT OF THE STATE OF ALASKA

HAROLD F. PARKER, Appellant, v. ALASKA POWER AUTHORITY, Appellee.	Supreme Court No. S-6350 Superior Court No. 3AN-83-1880 CI O P I N I O N [No. 4331 - March 29, 1996]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Brian C. Shortell, Judge.

Appearances: Harold F. Parker, pro se, Talkeetna. Ross A. Kopperud, Assistant Attorney General, Anchorage, Bruce M. Botelho, Attorney General, Juneau, for Appellee.

Before: Rabinowitz, Matthews, Compton and Eastaugh, Justices. [Moore, Chief Justice, not participating.]

MATTHEWS, Justice.

Harold Parker is the holder of a mining claim located on land owned by the State. The Alaska Power Authority (APA) built two power line towers on this land under a right-of-way permit issued by the State. Prior to the construction of the towers the

APA filed an eminent domain complaint against Parker because of his ownership of the mining claim on the land.

Parker moved for a deposit of just compensation pursuant to AS 09.55.400. The APA filed a memorandum which argued that APA need not proceed by eminent domain. The APA alleged that Parker's mining claim, a creation of AS 38.05.255, is subject to reasonable concurrent uses, that the towers represented a reasonable concurrent use, and that the APA need not compensate Parker because it had not taken any property or rights to property from Parker. The parties treated APA's memorandum as a motion to dismiss, and Parker responded to it. The trial court then dismissed the case, stating:

> Pursuant to Civil Rule 72(i)(1) and (3), the above-captioned case is dismissed without prejudice. Defendant Parker is free to mine in and around [the land the APA occupies] provided he comply with State of Alaska, Department of Natural Resources, Division of Mines' statutes and regulations governing such activities.

From this order Parker has appealed.

Civil Rule 72(i)(1) and (3), regarding eminent domain, provided at the time of the dismissal:

> (i) Dismissal of Action.
>
> (1) As of Right. If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in or taken possession, the plaintiff may dismiss the action as to that property, without an order of the court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

. . . .

> (3) By Order of the Court. At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The court at any time may drop a defendant unnecessarily or improperly joined.

The only issue in this case is whether the superior court correctly dismissed the complaint under either of the above subsections. We conclude that dismissal was proper under both subsections.

Both subsections speak to the acquisition of title or a lesser interest or the taking of possession of the property in question. Both subsections make clear that for a defendant to receive compensation there must be a taking accomplished by eminent domain. If there has been no taking then a defendant has no right to compensation, and the action may be dismissed.

APA acquired its right to possess the land in question by a right-of-way permit from the owner of the surface estate, the State of Alaska. The question in this case is whether an additional title or right to possession must be acquired from Parker. To answer this question the nature of Parker's interest must be examined.

At common law, the scope of a mineral owner's rights to the surface estate was "determined by reasonableness: the mineral owner [was] entitled to use as much of the surface estate as [was]

reasonably necessary to obtain access to the minerals. Conduct [was] reasonable if it [was] consistent with the practices of the extraction industry." Ronald W. Polston, Surface Rights of Mineral Owners - What Happens When Judges Make Law and Nobody Listens?, 63 N.D. L. Rev. 41, 42 (1987). Norken Corp. v. McGahan, 823 P.2d 622, 628 (Alaska 1991). Thus, the mineral interest was the dominant estate, and "the mineral owner [had] no obligation to pay the surface owner for the reasonable amount of surface consumed in the development of the mineral estate."[1] Id.; see also Michelle A. Wenzel, The Model Surface Use and Mineral Development Accommodation Act: Easy Easements for Mining Interests, 42 Am. U. L. Rev. 607, 622 (1993).

The common law rule is not applicable to lands owned by or devolving from the State of Alaska. Alaska Statute 38.05.125 reserves minerals from every land grant.[2] Thus, much land in

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[1] The authorities Parker cites for the proposition that he has a right to exclusive use of the surface above his mining claim follow this common law rule; they are not Alaska cases.

[2] AS 38.05.125(a) states:

> Each contract for the sale, lease or grant of state land, and each deed to state land, properties or interest in state land, made under AS 38.05.045-38.05.120, 38.05.321, 38.05.810-38.05.825, AS 38.08, or AS 38.50 except as provided in AS 38.50.050 is subject to the following reservations: "The party of the first part, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which

(continued...)

Alaska is divided into surface and mineral estates. A mineral rights owner has a right to surface uses of the land containing the minerals he owns. Such uses shall be "limited to those necessary for the prospecting for, extraction of, or basic processing of mineral deposits and shall be subject to reasonable concurrent

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[2](...continued)
may be in or upon said land above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said land, or any part or parts thereof, at any and all times for the purpose of opening, developing, drilling, and working mines or wells on these or other land and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said land or any part thereof for the foregoing purposes and to occupy as much of said land as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved."

uses." AS 38.05.255.[3] Further, before mineral rights are exercised under a reservation of mineral rights made pursuant to AS 38.05.125, the mineral rights owner must "make provision to pay the owner of the land full payment for all damages sustained by the owner, by reason of entering upon the land." AS 38.05.130.

Thus, Parker's surface right is a limited one. He can use the surface as necessary for his mining activities, but his surface uses are subject to reasonable concurrent uses. The State, as the owner of the surface estate, is permitted to convey all or part of its interest to other parties and it has done so in this case through the right-of-way grant to APA.

Because of Parker's limited interest in the surface estate, APA has not, by acquiring the right of way or constructing the power line towers, acquired title or a lesser interest in, or taken possession of, any property interest Parker has in the mining claim. APA thus had the right, under Civil Rule 72(i)(1), to have this case dismissed. For the same reason, dismissal by the court was proper under Civil Rule 72(i)(3).

Parker has made no attempt to mine the property. Further, he has not shown that he has plans to commence mining operations in the near future. Any claim that APA has taken an

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[3] AS 38.05.255 provides in part:

> Surface uses of land or water included within mining properties by owners of those properties shall be limited to those necessary for the prospecting for, extraction of, or basic processing of mineral deposits and shall be subject to reasonable concurrent uses.

interest in or possession of Parker's mineral rights is premature. If, in the future, Parker can demonstrate that the APA towers substantially interfere with his mining activity, he can initiate an inverse condemnation action. We intimate no view as to how the specific legal or factual issues presented by such a suit should be resolved.

AFFIRMED.

ORDER AWARDING FEES AND COSTS

Parker v. Alaska Power Authority
File No. S-6350

Under Appellate Rules 508(e) and (f)(1), attorney's fees of $1,000.00 are awarded to Alaska Power Authority, and Alaska Power Authority shall serve and file with this court by April 8, 1996 an itemized and verified bill of costs in compliance with Appellate Rule 508(d).

Entered at the direction of on March 29, 1996.

CLERK OF THE SUPREME COURT

Deputy Clerk