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JDS

ASARCO

Southwestern Exploration Division

VIA FAX

September 10, 1991

F.T. Graybeal
New York

State Trust Lands Workshop
September 20, 1991
Phoenix, Arizona

Mr. Kurtz advises me that I should secure the New York approval to attend this "workshop" on Arizona State Trust Lands, see attached.

Although I cannot and will not add any input to the discussions, I believe the thoughts to be expressed in the 10:15 and on through break-up by others, might have an influence on how I view, and thus request funding for, exploration on State Lease Lands.

JDS:mek
Att.

James D. Sell
James D. Sell

cc: W.L. Kurtz

*RLB sees No — 9/11/91
Call Ted & ask him to
297-4330
rebrief us. — then call RLB
& write note.*

HJD. →

HARD MINERAL DEVELOPMENT ON STATE
TRUST LANDS IN ARIZONA

FILE

WLK

SPONSORED BY: GUST, ROSENFELD & HENDERSON
AMIGOS and
ARIZONA STATE LAND DEPARTMENT

PROGRAM CHAIRMAN: FRED E. FERGUSON, JR., Partner,
Gust, Rosenfeld & Henderson

JDS - please check
NY for permission to
attend (the ICO connection)
probably send them a copy

PROGRAM

Friday, September 20, 1991
Phoenix Country Club
2901 N. 7th Street
Phoenix, Arizona 85014
(602) 263-5208

This is intended to be a workshop for persons interested in pursuing exploration for or development of hard minerals on State trust lands in Arizona. The workshop will provide landmen, geologists, explorationists, lawyers and mine operators an opportunity to learn first-hand the policies and procedures of the Arizona State Land Department. Dialogue between administrators and persons who presently hold or are interested in acquiring exploration permits or hard mineral leases on State of Arizona trust land will be welcomed.

8:30 - 8:45

REGISTRATION

8:45 - 9:00

INTRODUCTION AND OPENING REMARKS

M. J. HASSELL, Commissioner, Arizona
State Land Department

9:00 - 10:00

MINERAL DEVELOPMENT ON STATE
LANDS BEFORE KADISH AND AS
A CONSEQUENCE OF KADISH AND
ITS PROGENY

FRED E. FERGUSON, JR., Partner,
Gust, Rosenfeld & Henderson

Will provide an overview of mineral leasing procedures and activities on state lands under the 1961 Prospecting Permit law and traditional fixed royalty leasing statute predating Kadish v. Arizona State Land Department. Will briefly review the Kadish cases and outline the "Appraised True Value" requirement and other legislative innovations engrafted on the state mineral leasing laws in 1989.

10:00 - 10:15

BREAK

10:15 - 10:50

ADMINISTRATIVE APPLICATION OF
"APPRAISED TRUE VALUE"

ROBERT YOUNT, Director, Natural
Resources Division, and
MICHAEL RICE, Manager, Minerals
Section, State Land Department

Will discuss Land Department appraisal and reappraisal policies and methods for determining mineral lease rental and royalty rates for existing and future mineral leases.

10:50 - 11:25

ECONOMIC IMPLICATIONS OF GROSS
ROYALTY VS. NET SMELTER RETURNS

REED S. MITTELSTAEDT, Senior
Manager, Price Waterhouse, Phoenix

Will compare the economic impact on mine feasibility of the new gross royalty formula with the effect of the former modified net smelter return royalty and selected models.

11:25 - 12:00

AN OPERATOR'S VIEW OF "APPRAISED
TRUE VALUE"

TED H. EYDE, GSA Resources, Inc.,
Cortaro, Arizona (1991 President,
Society for Mining, Metallurgy &
Exploration)

A review of an operator's experience negotiating an "appraised" royalty with the State Land Department on an existing state mineral lease.

12:00 - 1:30

LUNCH - On Your Own.

1:30 - 2:05

PANEL DISCUSSION - "APPRAISED TRUE
VALUE" AND ITS IMPLICATIONS FOR
MINERAL DEVELOPMENT OF STATE LAND

ROBERT YOUNT, MICHAEL RICE,
TED H. EYDE, REED S. MITTELSTAEDT,
and FRED E. FERGUSON, JR., Moderator

This will be an opportunity for a frank exchange of views among panelists and the audience regarding the operation and effect of the appraised royalty concept.

2:05 - 2:40

EXPLORATION PERMITS AND
DEPARTMENTAL DISCRETION

GLEN COLLINS, Deputy Land
Commissioner, and
MICHAEL RICE, State Land Department

The Department will explain its policies underlying the interpretation of the new discretionary criteria of A.R.S. §27-251.B in the granting or denial of applications for exploration permits and its technical requirements for operating plans and reclamation bonds.

2:40 - 3:15

SUPERVISION AND ENFORCEMENT OF
REGULATIONS AFFECTING MINERAL
DEVELOPMENT ON STATE LAND

KATHERINE MEAD, Assistant
Attorney General, and
MICHAEL RICE, State Land Department

Will discuss the confidentiality of sensitive economic and geologic data
furnished to the Department and provide an overview of the Department's
procedures for inspection, audit and reporting.

3:15 - 3:30

BREAK

3:30 - 4:05

MINERAL LEASE AUCTION PROCEDURES

LEROY E. KISSINGER, Director,
Department of Mines & Mineral
Resources, Phoenix, Arizona

The discussion will outline the new statutory requirements for the
auctioning of mineral leases and suggest practical approaches to procedures
for implementing the requirements.

4:05 - 4:45

PANEL DISCUSSION - WORKING WITH
DEPARTMENTAL DISCRETION AND
PROCEDURES

GLEN COLLINS, MICHAEL RICE,
KATHERINE MEAD, LEROY KISSINGER,
and FRED E. FERGUSON, JR., Moderator

Panel members will discuss tradeoffs between administrative requirements
and industry concerns and respond to questions and comments from the
audience.

4:45

ADJOURNMENT

REGISTRATION FORM

HARD MINERAL DEVELOPMENT ON STATE TRUST LANDS IN ARIZONA

Name _____

Firm/Company _____

Address _____

City _____ State _____ Zip _____

Telephone () _____

Registration Fee (Advance) _____ \$15

Registration Fee (At the Door) _____ \$20

MAKE CHECK PAYABLE TO: Gust, Rosenfeld & Henderson.

Mail registration form and check to: Fred E. Ferguson, Jr.
Gust, Rosenfeld & Henderson
201 N. Central Ave., Suite 3300
Phoenix, AZ 85073
(602) 257-7422

PLEASE PASS ALONG TO ANYONE WHO MAY BE INTERESTED IN THE PROGRAM.

SEATING IS LIMITED AND RESERVATIONS WILL BE ACCEPTED ON A FIRST-COME,
FIRST-SERVED BASIS.

State of Arizona
 Senate
 Thirty-ninth Legislature
 First Regular Session
 1989

ISSUED BY
JIM SHUMWAY
 SECRETARY OF STATE

Chapter 288
 SENATE BILL 1310

AN ACT

RELATING TO MINERALS, OIL AND GAS; PRESCRIBING APPRAISAL, COMPUTATION AND ASSESSMENT OF MINERAL RENTAL, ROYALTY AND COSTS FOR STATE LANDS; PROVIDING FOR INTEREST, PENALTIES AND LIENS FOR UNPAID MINERAL RENT AND ROYALTY; PRESCRIBING APPEAL; PROVIDING FOR AUCTION OF STATE MINERAL LEASES; PRESCRIBING EFFECT, RENTAL AND ROYALTY FOR CERTAIN EXISTING LEASES; PROVIDING FOR TERMINATION OF A MINERAL LEASE BY THE LESSEE UPON WRITTEN NOTICE TO THE COMMISSIONER; PROVIDING FOR INSPECTIONS, INVESTIGATIONS, AUDITS, WRITTEN REPORT AND CONFIDENTIALITY OF CERTAIN INFORMATION; AUTHORIZING CERTAIN DISCRETIONARY ISSUANCE AND DENIAL OF STATE MINERAL EXPLORATION PERMITS, MINERAL LEASES AND MINERAL LEASE RENEWALS; MAKING CONFORMING AND TECHNICAL CHANGES; PRESCRIBING ENFORCEMENT AND AUDITOR GENERAL REVIEW AND REPORT; AMENDING SECTION 27-233, ARIZONA REVISED STATUTES; REPEALING SECTION 27-234, ARIZONA REVISED STATUTES; AMENDING TITLE 27, CHAPTER 2, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 27-234; AMENDING SECTIONS 27-235, 27-238 AND 27-251, ARIZONA REVISED STATUTES; AMENDING TITLE 27, CHAPTER 2, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 27-239, AND AMENDING TITLE 27, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 27-276.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 27-233, Arizona Revised Statutes, is amended to
 3 read:

4 27-233. Preferred right of locator to lease land:
 5 discovery work; lease renewal

6 A. The locator of a lode mining claim or claims on state lands
 7 pursuant to this article ON APPROVAL OF THE STATE LAND COMMISSIONER shall
 8 have a preferred right to a mineral lease of each claim within ninety days
 9 after the date of location. THE COMMISSIONER MAY DENY THE APPLICATION FOR
 10 A MINERAL LEASE FOR ANY OF THE REASONS LISTED IN SECTION 27-251,
 11 SUBSECTION 5.

12 B. The locator of a lode mining claim located pursuant to section
 13 27-232 shall be required to perform the discovery work required by law for
 14 mining claims under the laws of the United States within the ninety-day

1 period or an equivalent amount of development drilling of a reasonable
 2 value of one hundred dollars on each claim. The development drilling may
 3 be centrally located and need not be upon each individual claim, but shall
 4 be so located as to be part of a plan of development for the group, and in
 5 no event shall the minimum requirement prescribed for each individual
 6 claim be dispensed with. The locator shall not receive a lease unless he
 7 submits to the state land commissioner satisfactory proof of the
 8 performance of such discovery work within such reasonable time as the
 9 STATE land commissioner prescribes.

10 C. Upon application to the commissioner, not less than thirty nor
 11 more than sixty days prior to the expiration of the lease, the lessee of
 12 mineral lands, if he is not delinquent in the payment of rental or royalty
 13 on the date of expiration of the lease, shall have a preferred right to
 14 renew the lease bearing even date with the expiration of the old lease for
 15 a term of twenty years. THE COMMISSIONER MAY DENY THE RENEWAL APPLICATION
 16 FOR ANY REASON LISTED IN SECTION 27-251, SUBSECTION B, PARAGRAPHS 1
 17 THROUGH 4.

18 Sec. 2. Repeal

19 Section 27-234, Arizona Revised Statutes, is repealed.

20 Sec. 3. Title 27, chapter 2, article 3, Arizona Revised Statutes;
 21 is amended by adding a new section 27-234, to read:

22 27-234. Rent; royalty; appeal; interest; penalty; lien

23 A. BEFORE ISSUING A MINERAL LEASE THE STATE LAND COMMISSIONER SHALL
 24 ESTABLISH THE ANNUAL LAND RENTAL FOR THE MINERAL LEASE. THE RENTAL SHALL
 25 BE BASED ON AN APPRAISAL THAT CONSIDERS ONLY NONMINING USES OF COMPARABLE
 26 LAND. THE ANNUAL RENTAL:

27 1. SHALL NOT BE LESS THAN SEVENTY-FIVE CENTS PER ACRE.

28 2. IS PAYABLE IN ADVANCE OF EXECUTING THE MINERAL LEASE AGREEMENT
 29 BY THE COMMISSIONER AND AT THE BEGINNING OF EACH ANNUAL PERIOD THEREAFTER.

30 ~~BY IN ADDITION TO THE ANNUAL LAND RENTAL PAYMENT, A ROYALTY FEE IS~~
 31 ~~IMPOSED OF AT LEAST TWO PER CENT BASED ON THE GROSS VALUE OF ALL OF THE~~
 32 ~~RECOVERED MINERALS OR MINERAL PRODUCTS. THE ROYALTY RATE FOR EACH MINERAL~~
 33 ~~LEASE SHALL BE THE APPRAISED TRUE VALUE OF THE LEASEHOLD INTERESTS OF THIS~~
 34 ~~STATE, ESTABLISHED ACCORDING TO THE APPRAISAL STANDARD PRESCRIBED BY~~
 35 ~~SUBSECTION C OF THIS SECTION AND EXPRESSED AS A PERCENTAGE OF THE GROSS~~
 36 ~~VALUE. THE GROSS VALUE SHALL BE BASED ON THE MONTHLY AVERAGE PUBLISHED~~
 37 ~~UNIT PRICE FOR MINERALS AND MINERAL PRODUCTS AS CITED IN COMMERCIAL~~
 38 ~~COMMODITIES OR TRADING INDEXES OR TRADING JOURNALS AS DETERMINED BY THE~~
 39 ~~COMMISSIONER AND SPECIFIED IN THE LEASE. IF A MINERAL PRODUCT DOES NOT~~
 40 ~~HAVE A PUBLISHED PRICE, THE GROSS VALUE SHALL BE ESTABLISHED BY REFERENCE~~
 41 ~~TO THE TOTAL AMOUNT PAID AT THE FIRST POINT OF SALE OR THE VALUE AT THE~~
 42 ~~POINT OF USE.~~

43 C. THE COMMISSIONER SHALL APPRAISE THE RIGHT TO EXTRACT MINERALS
 44 FROM THE TRUST LAND BEFORE ISSUING A MINERAL LEASE IN ORDER TO DETERMINE
 45 WHETHER A ROYALTY RATE GREATER THAN THE MINIMUM RATE ESTABLISHED BY
 46 STATUTE IS JUSTIFIED TO OBTAIN A FAIR VALUE FOR THE MINERAL ORES OR
 47 PRODUCTS. AT THE END OF THE FIRST YEAR OF COMMERCIAL PRODUCTION, THE

No note on top limit

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COMMISSIONER SHALL REAPPRAISE THE ROYALTY RATE TO DETERMINE IF THERE SHOULD BE AN ADJUSTMENT, BUT IN NO CASE MAY THE ROYALTY RATE BE SET BELOW THE MINIMUM PRESCRIBED BY SUBSECTION B OF THIS SECTION. ROYALTY RATE APPRAISALS SHALL BE CONDUCTED ACCORDING TO STANDARD APPRAISAL METHODOLOGY TO ESTABLISH THE VALUE OF THE LEASEHOLD INTEREST OF THIS STATE BASED, TO THE EXTENT FEASIBLE, ON COMPARABLE ROYALTY RATES FOR COMPARABLE MINERAL LEASES. THE ROYALTY RATE SHALL BE REAPPRAISED AT THE TIME A MINERAL LEASE IS RENEWED AND MAY BE REAPPRAISED DURING THE TERM OF THE LEASE IF CHANGES IN MINERAL RECOVERY TECHNOLOGY OR THE DISCOVERY OF NEW MINERALS SUBSTANTIALLY CHANGES THE VALUE OF THE STATE LEASEHOLD INTEREST.

~~D. FOR MINES EXISTING ON STATE LANDS ON JUNE 8, 1989, THE ROYALTY PAID UNDER THIS SECTION SHALL NOT BE LESS THAN THE ROYALTY WHICH WOULD HAVE BEEN PAID UNDER STATUTES IN EFFECT IMMEDIATELY BEFORE JUNE 8, 1989.~~

E. THE COSTS OF ALL APPRAISALS CONDUCTED UNDER THIS SECTION SHALL BE ASSESSED AGAINST THE LESSEE AND ADDED TO THE AMOUNT DUE AS RENTAL UNDER THIS SECTION.

F. THE DEPARTMENT SHALL REVIEW ALL STATE AND COUNTY PROPERTY TAX ASSESSMENT INFORMATION RELEVANT TO THE MINERAL LEASE. THE DEPARTMENT SHALL MAINTAIN THAT INFORMATION ON A CONFIDENTIAL BASIS AS PRESCRIBED BY SECTION 42-108.

G. EVERY MINERAL LEASE OF STATE LAND SHALL REQUIRE THE LESSEE TO MAKE THE FOLLOWING RECORDS AVAILABLE ON AN ANNUAL BASIS:

- 1. ~~ITEMIZED STATEMENTS OF MINERAL PRODUCTION~~
- 2. ~~RELEVANT TAX RECORDS~~

3. ADDITIONAL RELEVANT RECORDS PERTINENT TO APPRAISAL, COMPLIANCE WITH THE LEASE AND MINERAL PRODUCTION DEEMED NECESSARY BY THE COMMISSIONER.

H. THE INFORMATION OBTAINED UNDER SUBSECTION G, PARAGRAPH 2 OF THIS SECTION AND ANY TRADE SECRETS, AS DEFINED IN SECTION 23-401, ARE CONFIDENTIAL.

~~I. MINERAL LESSEES SHALL MAKE MONTHLY ROYALTY PAYMENTS BASED ON THE MINERAL PRODUCTION ACTIVITY OF THE PREVIOUS MONTH.~~

J. APPEALS OF THE APPRAISAL DECISION OF THE COMMISSIONER MAY BE TAKEN PURSUANT TO SECTION 37-215 TO THE BOARD OF APPEALS, ESTABLISHED BY SECTION 37-213, WHICH SHALL AFFIRM, MODIFY OR REVERSE THE DECISION OF THE COMMISSIONER WITHIN ONE HUNDRED EIGHTY DAYS. DECISIONS OF THE BOARD OF APPEALS UNDER THIS SUBSECTION ARE SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. AS A CONDITION OF THE APPEAL, THE LESSEE MUST CONTINUE TO MAKE ALL RENTAL AND ROYALTY PAYMENTS DUE BASED ON THE COMMISSIONER'S FINAL APPRAISAL DECISION, AND THE COURT SHALL NOT STAY THE COMMISSIONER'S DECISION, IN WHOLE OR IN PART, PENDING A FINAL DISPOSITION OF THE CASE. THE STATE TREASURER SHALL SEGREGATE RENTS AND ROYALTIES PAID WHILE AN APPEAL IS PENDING AND SHALL NOT DISTRIBUTE SUCH MONIES TO THE STATE GENERAL FUND OR TO THE TRUST BENEFICIARIES UNTIL THE APPEAL IS COMPLETED.

K. IF A LESSEE FAILS TO PAY RENT OR ROYALTY, INCLUDING APPRAISAL COSTS UNDER SUBSECTION C OF THIS SECTION, ON OR BEFORE THE DATE THE



1 PAYMENT IS DUE, THE AMOUNT DUE ACCRUES INTEREST AT THE RATE AND IN THE
2 MANNER DETERMINED PURSUANT TO SECTION 42-134. IN ADDITION, IF IT IS
3 DETERMINED THAT THE FAILURE TO PAY IS NOT DUE TO REASONABLE CAUSE, A
4 PENALTY OF FIVE PER CENT OF THE AMOUNT FOUND TO BE REMAINING DUE SHALL BE
5 ADDED TO THE RENT OR ROYALTY FOR EACH MONTH OR FRACTION OF A MONTH
6 ELAPSING BETWEEN THE DUE DATE AND THE DATE ON WHICH IT IS PAID. THE TOTAL
7 PENALTY SHALL NOT EXCEED ONE-THIRD OF THE RENT OR ROYALTY REMAINING DUE.
8 THE PENALTY SO ADDED TO THE RENT OR ROYALTY IS DUE AND PAYABLE ON NOTICE
9 AND DEMAND FROM THE COMMISSIONER.

10 L. IF ANY RENT, ROYALTY, APPRAISAL ASSESSMENT, INTEREST OR PENALTY
11 IS NOT PAID BY THE LESSEE WHEN DUE, THE UNPAID AMOUNTS CONSTITUTE A LIEN
12 FROM THE DATE THE AMOUNTS BECOME DUE ON ALL PROPERTY AND RIGHTS TO
13 PROPERTY BELONGING TO THE LESSEE THAT ARE LOCATED ON STATE LAND.

14 Sec. 4. Section 27-235, Arizona Revised Statutes, is amended to
15 read:

16 27-235. Offering leases at auction: terms of lease:
17 Termination

18 A. THE STATE LAND COMMISSIONER MAY OFFER MINERAL LEASES AT PUBLIC
19 AUCTION, AFTER ADVERTISING, FOR STATE LANDS ON WHICH A MINING CLAIM HAS
20 NOT BEEN LOCATED OR A MINERAL EXPLORATION PERMIT OR MINERAL LEASE HAS BEEN
21 TERMINATED OR NOT BEEN RENEWED BY THE LESSEE OR PERMITTEE. THE
22 COMMISSIONER MAY ESTABLISH BY RULE THE PROCEDURE FOR CONDUCTING THE
23 AUCTION, BUT BIDDING IS LIMITED TO A CASH BONUS TO BE PAID IN FULL BEFORE
24 THE COMMISSIONER EXECUTES THE LEASE DOCUMENTS. THE LAND RENTAL AND
25 ROYALTY RATE ARE NOT SUBJECT TO BIDDING.

26 ~~A~~ B. Every mineral lease of state lands shall be for a term of
27 twenty years.

28 ~~B~~ C. The lease shall confer the right:

29 1. To extract and ship minerals, mineral compounds and mineral
30 aggregates from the claim located within planes drawn vertically downward
31 through the exterior boundary lines thereof. In case of leases made
32 pursuant to locations under ~~subsection 1~~ of section 27-232, SUBSECTION A,
33 the lease shall confer extralateral rights in the discovery vein similar
34 to those given locators upon the public domain of the United States under
35 the provision of ~~title 30,~~ United States Code, section 26 (U.S. Revised
36 Statutes, section 2322).

37 2. To use as much of the surface as required for purposes incident
38 to mining.

39 3. Of ingress to and egress from other state lands, whether or not
40 leased for purposes other than mining.

41 ~~C~~ D. Every mineral lease of state lands shall provide for:

42 1. The performance of annual labor, as required by the laws of the
43 United States, upon each claim or group of claims in common ownership,
44 commencing at the expiration of one year from the date of location, and
45 for furnishing proof thereof to the commissioner.

2. The fencing of all shafts, prospect holes, adits, tunnels and other dangerous mine workings for the protection of ~~the stock~~ PUBLIC HEALTH AND SAFETY AND LIVESTOCK.

3. The construction of necessary improvements and installation of necessary machinery and equipment with the right to remove it upon expiration, termination or abandonment of the lease, if all monies owing to the state under the terms of the lease have been paid.

4. The cutting and use of timber and stone upon the claim, not otherwise appropriated, for fuel, construction of necessary improvements, or for drains, roadways, tramways, supports, or other necessary purposes.

5. The right of the lessee and his assigns to transfer the lease.

6. Termination of the lease by the commissioner upon written notice specifically setting forth the default for which forfeiture is declared, and preserving the right to cure the default within a stated period of not less than thirty days.

E. THE LESSEE OF ANY MINERAL LEASE, IF NOT DELINQUENT IN THE PAYMENT OF RENT OR ROYALTY TO THE DATE OF TERMINATION, MAY TERMINATE THE LEASE AT ANY TIME DURING ITS TERM BY GIVING THE COMMISSIONER THIRTY DAYS' WRITTEN NOTICE OF THE TERMINATION.

Sec. 5. Section 27-238, Arizona Revised Statutes, is amended to read:

27-238. Existing leases

A. Every mineral lease in effect on June 16, 1941 under the provisions of section 2973, revised code of 1928, shall remain in effect for the unexpired term for which it was granted, without right of renewal, or, at the option of the lessee, may be superseded by a lease as provided by this article.

B. EVERY MINERAL LEASE AND MINERAL EXPLORATION PERMIT ISSUED UNDER THIS ARTICLE AND ARTICLE 4 OF THIS CHAPTER WHICH HAD NOT EXPIRED OR BEEN TERMINATED BY THE DEPARTMENT AS OF JUNE 8, 1989 SHALL BE IN EFFECT FOR THE UNEXPIRED TERM FOR WHICH IT WAS GRANTED. WITHIN ONE HUNDRED EIGHTY DAYS AFTER JUNE 8, 1989 THE STATE LAND COMMISSIONER SHALL SET THE RENTAL AND ROYALTY ACCORDING TO THE APPRAISAL STANDARDS PRESCRIBED BY SECTION 27-234 FOR ANY MINERAL LEASE OR MINERAL EXPLORATION PERMIT IN EFFECT ON JUNE 8, 1989 AND THAT RENTAL AND ROYALTY ARE EFFECTIVE AS OF DECEMBER 10, 1987.

Sec. 6. Title 27, chapter 2, article 3, Arizona Revised Statutes, is amended by adding section 27-239, to read:

27-239. Inspections, investigations and audits

A. THE STATE LAND COMMISSIONER OR THE COMMISSIONER'S AUTHORIZED REPRESENTATIVE MAY ENTER, AND THE LESSEE SHALL MAINTAIN ACCESS TO, THE STATE LAND HELD UNDER A MINERAL LEASE AT REASONABLE TIMES TO INSPECT THE WORKINGS, IMPROVEMENTS AND OTHER FACILITIES USED TO EXTRACT OR SEVER MINERALS, COMMON MINERAL PRODUCTS, MATERIALS OR PROPERTY FROM STATE LANDS.

B. THE COMMISSIONER OR HIS AUTHORIZED REPRESENTATIVE MAY ENTER AT REASONABLE TIMES TO:

- 1. OBTAIN FACTUAL DATA OR ACCESS TO RECORDS PERTINENT TO MINERAL PRODUCTION REQUIRED TO BE KEPT UNDER THE TERMS OF THE LEASE.



1 2. OTHERWISE ASCERTAIN COMPLIANCE WITH LAW AND THE TERMS OF THE
2 LEASE.

3 C. INSPECTIONS, INVESTIGATIONS AND AUDITS UNDER SUBSECTION A SHALL
4 BE ON REASONABLE NOTICE TO THE LESSEE UNLESS REASONABLE GROUNDS EXIST TO
5 BELIEVE THAT NOTICE WOULD FRUSTRATE THE ENFORCEMENT OF LAW OR THE TERMS OF
6 THE LEASE. THE COMMISSIONER MAY, AND IF REQUIRED BY LAW SHALL, APPLY FOR
7 AND OBTAIN WARRANTS FOR ENTRY AND INSPECTION.

8 D. THE COMMISSIONER MAY REQUIRE A LESSEE TO APPEAR AT REASONABLE
9 TIMES AND ON REASONABLE NOTICE AT THE COMMISSIONER'S OFFICE AND PRODUCE
10 SUCH RECORDS AND INFORMATION AS ARE SPECIFIED IN THE NOTICE TO DETERMINE
11 COMPLIANCE WITH THE TERMS OF THE LEASE.

12 E. THE COMMISSIONER SHALL PROVIDE TO THE LESSEE A WRITTEN REPORT OF
13 EACH INSPECTION, INVESTIGATION AND AUDIT UNDER THIS SECTION.

14 F. TAX RECORDS AND TRADE SECRETS, AS DEFINED IN SECTION 23-401,
15 OBTAINED UNDER THIS SECTION ARE CONFIDENTIAL.

16 Sec. 7. Section 27-251, Arizona Revised Statutes, is amended to
17 read:

18 27-251. Application for mineral exploration permit

19 A. Any natural person over eighteen years of age and any other
20 person qualified to transact business in this state may apply to the STATE
21 LAND commissioner for a mineral exploration permit on the state land in
22 one or more of the rectangular subdivisions of twenty acres, more or less,
23 or lots, in any one section of the public land survey. Such application
24 shall be in writing and signed by the applicant, or an authorized agent or
25 attorney for the applicant, and shall contain the name and address of the
26 applicant, a description according to the public land survey of the state
27 land for which the applicant seeks a mineral exploration permit, and such
28 other information as the commissioner may ~~by regulation~~ prescribe BY RULE.
29 The application shall be filed with the STATE LAND department and shall be
30 accompanied by payment to the department of a filing fee of twenty-five
31 dollars. Each application meeting the requirements of this section shall
32 be stamped by the department with the time and date it is filed with the
33 department. The application shall have priority over any other
34 application for a mineral exploration permit involving the same state land
35 which may be filed with the department subsequent to such time and date,
36 and such land shall be deemed withdrawn from location of mineral claims ~~to~~
37 AS long as the application is pending.

38 B. Not less than thirty days nor more than forty-five days from the
39 filing of the application with the department, provided there is no prior
40 application for a mineral exploration permit involving the same state land
41 then pending before the department, or if such prior application is then
42 pending but is subsequently cancelled, not more than fifteen days after it
43 is cancelled, the department shall mail to the applicant, ~~by registered or~~
44 ~~certified mail,~~ at the address shown on the application, a written notice
45 designating the state land described in the application which, at the time
46 the application was filed with the department, was open to entry and
47 location as a mineral claim or claims upon discovery of a valuable mineral

1 deposit thereon, the amount of rental required to be paid for the mineral
 2 exploration permit as herein provided, and whether a bond will be required
 3 under the provisions of section 27-255 as a condition to issuance of such
 4 permit. If, within fifteen days after the mailing of such notice, the
 5 applicant pays to the department as rental for the permit the amount of
 6 two dollars per acre for each acre of state land designated in the notice
 7 and files with the department the bond, if any, required under section
 8 27-255, AND IF THE COMMISSIONER FINDS THAT ISSUING THE PERMIT IS IN THE
 9 BEST INTEREST OF THE TRUST, the commissioner shall issue to the applicant
 10 a mineral exploration permit for the state land designated in the notice.
 11 THE COMMISSIONER MAY DENY THE APPLICATION FOR ANY OF THE FOLLOWING
 12 REASONS:

- 13 1. THE APPLICATION WAS NOT MADE IN GOOD FAITH.
- 14 2. THE PROPOSED PROSPECTING OR POSSIBLE FUTURE MINING ACTIVITIES
 15 WOULD NOT BE THE HIGHEST AND BEST USE OF THE TRUST LANDS.
- 16 3. THE VALUE AND INCOME POTENTIAL OF SURROUNDING TRUST LANDS WOULD
 17 BE ADVERSELY AFFECTED AND THE BENEFIT FROM PROPOSED PROSPECTING AND FUTURE
 18 MINING ACTIVITY CANNOT REASONABLY BE EXPECTED TO BE GREATER THAN THE
 19 DIMINISHED VALUE TO THOSE SURROUNDING TRUST LANDS.
- 20 4. THE PROPOSED OPERATIONS WOULD VIOLATE APPLICABLE STATE OR
 21 FEDERAL LAW.
- 22 5. THE COMMISSIONER DETERMINES THAT THE PROPOSED PROSPECTING
 23 ACTIVITIES OR POSSIBLE FUTURE MINING ACTIVITIES WILL CREATE A LIABILITY TO
 24 THE STATE GREATER THAN THE INCOME FROM THE PROPOSED OPERATIONS.

25 C. During the period such mineral exploration permit is in ~~force~~
 26 ~~and~~ effect no person except the permittee and the authorized agents and
 27 employees of the permittee shall be entitled to explore for minerals on
 28 the state land covered by the permit, and no mineral claim or mineral
 29 lease shall be located or issued on such land except as provided in this
 30 article. If the applicant fails to make the payment or furnish the bond
 31 within the period of fifteen days, the application shall be deemed
 32 cancelled and of no further effect.

33 Sec. 8. Title 27, chapter 2, article 5, Arizona Revised Statutes,
 34 is amended by adding section 27-276, to read:

35 27-276. Enforcement
 36 LEASES ISSUED AND EXECUTED UNDER THIS ARTICLE ARE SUBJECT TO THE
 37 ENFORCEMENT PROVISIONS PRESCRIBED BY SECTION 27-239.

38 Sec. 9. Auditor general review and report on state land mineral
 39 leasing

40 The auditor general shall review and, not later than December 31,
 41 1991, report to the governor, the president of the senate and the speaker
 42 of the house of representatives on the status of mineral leasing on state
 43 trust lands. The review and report shall include:

- 44 1. The performance of the state land department in enforcing the
 45 provisions of this act.
- 46 2. The economic impact of this act.



1 Sec. 10. Emergency

2 To preserve the public peace, health and safety it is necessary that
3 this act become immediately operative. It is therefore declared to be an
4 emergency measure, to take effect as provided by law.

Approved by the Governor June 28, 1989.

Filed in the Office of Secretary of State June 28, 1989

1803 E. 10TH ST.
TUCSON, AZ 85719

(602) 884-5345

H. J. DOWNEY, INC.

EXPLORATION & DEVELOPMENT

September 25, 1991

I.D. # 86-0636964

Mr. James D. Sell
ASARCO, Inc.
1150 North 7th Avenue
Tucson, AZ 85703

INVOICE

Miscellaneous services & expenses relating to the Ventura Project

Services:

1 day @ \$250.00.....\$ 250.00

Expenses:

Mileage 264 @ \$.35.....\$	92.40
Lodging.....	21.95
Meals.....	23.50
Materials.....	17.09

\$ 154.94	154.94
-----------	--------

Total Due	404.94
-----------	--------

Harold J. Downey
Harold J. Downey

9/25/91
Date

*OK for Payment
James D. Sell
Ventura Project
EA-0165*

ASARCO

Southwestern Exploration Division

September 25, 1991

FILE NOTE

AZ State Land Department
Minerals Division Workshop
September 20, 1991
Phoenix, Arizona

I have received a memo concerning the reaction to listening to the participants at the recent Minerals Division Workshop of the Arizona State Land Department, attended by about 20 people.

Handouts by the speakers are attached.

Several points of interest: page 2 of Ferguson, section A-4. Lease Activity. Out of several hundred leases in years 1975-1980, only 12-14 were producing leases, and during 1979-80, four of these produced 99.96% of the mineral royalty income. On the last handout by Yount-Rice, for the four years 1987-1991 (post-Kaddish), ten leases paid royalties with the two copper mines paying \$4,150,000 of the total \$4,210,068 receipts.

As noted, the SWED secretary has tapes of the various speakers and comments.

JDS:mek
Att.


James D. Sell

cc: R.L. Brown
F.T. Graybeal
W.L. Kurtz
W.D. Gay

MEMORANDUM

Date: September 23, 1991

Subject: State Land Department Minerals Division Workshop, Phoenix,
September 20, 1991

This memo will summarize presentations given by the various speakers selected by the State Land Department explaining mineral leasing policies and procedures on state lands in Arizona. The meeting was attended by about 20 people from the mining industry and a few others from state offices not involved in the presentations. I would say that the workshop was generally informative in explaining how the Land Department will calculate royalties and in its overall policies in administering the new mining law, however, some aspects of the law were left somewhat vague, particularly in the area of prospecting permits and the period from permit to leasing. Of major concern to me was an opening statement made by Glen Collins (afternoon session) that it is not the Land Department's job to encourage exploration, but only to administer those deposits already located. I found his talk to be quite depressing.

Summary of presentations is as follows:

Morning Session

8:45 - 9:00: M. J. Hassell, State Land Commissioner: Gave opening remarks regarding the importance of mineral deposits and income derived from leasing.

9:04 - 9:45: Fred Ferguson, Mining Lawyer, Gust, Rosenfeld & Henderson: Gave history of Kadish lawsuit and discussed royalty rates before and after the U.S. Supreme Court decision. Reviewed the legal interpretations of appraisal and royalty rates (refer to handout by Ferguson).

10:06 - 10:46: Robert Yount, Director, Natural Resources Division & Mike Rice, Manager, Minerals Section, State Land Department: Summarized appraisal methods (cost, income, market value approaches). Discussed royalty rates compared with other western states. The range to be used by Arizona will be from 2% to 8% of gross value. The 5% NSR rate comes out to be about 2.3% on new rate. The 2% minimum by the new rate will be applied at the break even point of any operation. 8% will probably be the highest rate. A 5% rate can be expected during the first year of a new lease.

10:50 - 11:05: Reed Mitterstaedt, Manager, Price Waterhouse, Phoenix: Using accounting terminology, compared new royalty rates vs. old NSR method. Some of this talk was over my head but his handout sheets gave some comparative examples. This is a good

handout particularly for people with an accounting background.

11:10 - 11:30: Ted H. Eyde, GSA Resources, Inc., Cortaro: Discussed how royalties impact his industrial minerals business with its effect being similar to a "value added tax". Noted that the position of "point of recovery" has a major role in the royalty amount. Noted that his operational costs included detailed specification sheets that are expensive to prepare. His handout contains an article by H. Lyn Bourne containing interesting royalty data.

11:35 - 11:50: Question & Answer period.

Afternoon Session

1:30 - 2:00: Continuation of Q & A period & panel discussion.

2:04 - 2:40: Glen Collins, Deputy Land Commissioner & Mike Rice: Gave criteria for denying prospecting permit applications and requirements for bonding and operating plans. Pointed up differences in policies between Federal & State agencies. Emphasised that the State Land Department does not promote exploration - that it only administers as trustee in the best interests of the lands, therefore prospecting permits and leases may be denied if the Commissioner feels that as trustee, the best interests of the lands are not being served.

2:41 - 3:10: Kate Mead, Assistant Attorney General & Mike Rice: Discussion of confidentiality of geologic and economic information, also auditing and inspection procedures.

3:35 - 3:45: Leroy E. Kissinger, Director, Department of Mines & Mineral Resources, Phoenix: Briefly discussed auctioning procedures. General feeling that an auction would be a rare occasion.

3:45 - 4:15: Panel discussion & Question & Answer period.

Adjournment

Sessions were recorded - index to tapes attached

Speakers' handouts attached

9/23/91
Date

Arizona State Land Dept. Minerals Division Workshop

September 20, 1991

Phoenix, Arizona

Index to tape recordings:

Tape #	Side	Time	Speaker
1	A	8:45	M. Jean Hassell
1	A	9:04	Fred Ferguson
1	B	9:18	" "
1	B	10:06	Robt. Yount Mike Rice
2	A	10:10	" "
2	B	10:46	" "
2	B	11:10	Ted Eyde
3	A	11:20	" "
3	B	11:35	Question & Answer
3	B	1:30	Panel Discussion
4	A	2:04	Glen Collins
4	B	2:40	" "
4	B	2:41	Kate Mead
5	A	3:35	Leroy Kissinger
5	A	3:45	Question & Answer

MINERAL DEVELOPMENT ON STATE LAND

KADISH v. ARIZONA STATE LAND DEPARTMENT AND ITS PROGENY

FRED E. FERGUSON, JR.

September 20, 1991

Phoenix Country Club
Phoenix, Arizona

BIOGRAPHICAL SKETCH

FRED E. FERGUSON, JR.

- Mr. Ferguson is a partner in the law firm of Gust, Rosenfeld & Henderson practicing in the areas of mineral law, public lands and related natural resource issues and environmental law.
- His public lands experience includes administrative practice before state and federal land management agencies, dealing with wilderness and NEPA issues, and permitting of mineral activities on public lands.
- Mr. Ferguson has negotiated hundreds of contracts of various kinds relating to real property sales and natural resource development, including contracts for purchase and sale, mining leases, joint ventures and partnerships.
- Participated in substantial commercial and real property litigation, representing clients in state and federal courts and in administrative proceedings in cases involving real property titles, contract interpretation, statutory construction and mining law issues.
- Mr. Ferguson is a trustee of the Rocky Mountain Mineral Law Foundation and has chaired the Foundation's Long Range Planning Committee.
- Author of articles on natural resource topics, including public lands issues, mining law, and mineral development on Indian lands, for law reviews and publication of the Rocky Mountain Mineral Law Foundation.
- Authored the section of the American Law of Mining, 2d Ed. on Joint Operating Agreements. Active participant in drafting RMMLF Joint Operating Agreement (Form 5).
- Judge Pro Tempore, Arizona Court of Appeals, Div. 1 (1986).
- University of Arizona, LL.B., 1963
Arizona State University, B.S., 1958

MINERAL DEVELOPMENT ON STATE LAND

KADISH v. ARIZONA STATE LAND DEPARTMENT AND ITS PROGENY

FRED E. FERGUSON, JR.

September 20, 1991

- I. Mineral Exploration and Leasing System on State Land Before Kadish.
 - A. Mineral Leases of State Land
 1. Economic terms of mineral lease were fixed by statute. A.R.S. §27-234 (1969)
 - a. Rental - \$15 per claim per year
 - b. Royalty - 5% of "net value" of minerals. By statute "Net Value" means gross value after processing, less cost of transportation from place of production to place of processing, costs of processing, and taxes on production.
 - (1) In practice "Net Value" = Proceeds of sale after processing, less costs of concentrating and smelting, transportation costs from mine to concentrator and from concentrator to smelter, and severance taxes.
 - (2) Typical NSR is not so liberal because deduction for costs of concentrating and costs of transportation from mine to concentrator are not customarily allowed.
 - c. Lease term: 20 years. A.R.S. §27-235(1969)
 - d. Work requirement: \$100/claim or 20 acre parcel/year
 2. Discovery of valuable mineral deposit was and is required. A.R.S. §§27-231 and 27-254. For many years little evidence of discovery was required. Requirement for proof of discovery has been tightened up administratively in recent years.
 3. Preferred rights.
 - a. Claim locator has preferred right to receive lease. A.R.S. §27-233

State v. Jones, 94 Ariz. 334, 385 P.2d 213 (1963), (Claim locator who applies for mineral lease does not have an exclusive or absolute right to lease, but a meritorious claim to be considered in best interests of the state.)

- b. Mineral lessee has preferred right to renewal of lease for 20 years. A.R.S. §§27-233.C and 27-254

Tanner Companies v. State Land Dept., 142 Ariz. 183, 688 P.2d 1075 (App. 1984) (Not a preference right against the state; commissioner may refuse to renew a lease if it is in the best interest of the state.)

Commissioner's exercise of discretion will control except in case of grave abuse or illegal exercise of discretion.

4. Lease Activity

- a. Mineral leases: Several hundred
- b. Producing leases: 12-14 during past 5 years.
 - (1) During 1979-80 four lessees produced 99.96% of mineral royalty income.
 - (2) Majority of leases, yielding only .04% of royalty income, are considered nuisance leases.

B. Auditor General's Report (August, 1980)

- 1. Report concluded that if Arizona's mineral lease royalty rate was comparable to other state's royalty rates, revenues from mineral leases would have been as much as \$6.5 MM more during 1979. Report recommended adoption of a gross value royalty and giving SLD authority to establish royalty rates on mining leases.
- 2. Advantages for Gross Royalty
 - a. Reporting would be simplified for lessee.
 - b. State would discontinue subsidizing lessees who operate uneconomically or inefficiently.
 - c. SLD could audit royalty payments more efficiently.

3. Objectivity of Report.

- a. Did not consider any potential disadvantage of gross vs. net royalty.
- b. No data regarding revenues produced from state lands in other states with higher royalty rates.
- c. Contained no analysis of effect on maximization of recovery by raising cut off grade.
- d. Report was endorsed by the SLC, Fallini and praised for its objectivity.

C. Proposed legislation (1979-1980)

Bills introduced in Legislature in 1979 and 1980 to implement recommendations of Report were defeated.

II. Kadish

A. Superior Court (April 1981-1985) (Kadish v. Arizona State Land Department. Action for declaratory and injunctive relief.

1. Parties.

a. Plaintiffs: Frank and Lorain Kadish, Marion Pickens and Arizona Education Association, by attorney David Baron of Arizona Center for Law in Public Interest

b. Defendants: Arizona State Land Dept., Joe Fallini (State Land Commissioner) and Cyprus Pima Mining Company

c. Intervenors:

Magma Copper Company
ASARCO Incorporated
James P.L. Sullivan
Eisenhower Mining Company
Can-Am Corporation

2. Class action designation in 1984: Class consists of all present and future mineral lessees of state land.

Cyprus Pima, Magma and ASARCO were designated class representatives

3. Positions asserted:

- a. Plaintiffs sought to invalidate A.R.S. §27-234 that set a fixed royalty rate for minerals produced from state land. Plaintiffs contended that statute violated Enabling Act and Arizona Constitution because it impermissibly limits the return to the school trust fund.

Plaintiffs contended that the following Enabling Act restrictions which were applicable at statehood continued to apply despite amendments:

- (1) Act prohibits sale, conveyance or encumbrance of state trust lands except to highest bidder at a public auction after notice by advertisement;
- (2) State could dispose of trust land or its products only if it obtains "true value" as determined by prior appraisal;
- (3) Every disposition of state trust land or its products not made in substantial conformity with the Act is void.

- b. Defendants contended Amendments to Enabling Act and State Constitution authorize state legislature to provide for mineral leases of less than 20 years without appraisal, advertising and public auction.

Jones Act of 1927:

- (1) Confirmed in western states title to all mineral lands granted to states, regardless of known or unknown mineral character at statehood.
- (2) Authorized states to lease minerals "as the state legislature may direct."
- (3) Prohibited sale of mineral rights on sale of land by state.
- (4) Did not incorporate restrictions of Enabling Act.

Enabling Act was further amended in 1936 and 1951.

The effect of these amendments was principal area of contention. Whether amendments authorize state legislature to prescribe lease term for mineral purposes for 20 years or less without appraisalment, advertising and bidding process.

4. Disposition: Plaintiff's complaint was dismissed by trial court on July 22, 1985. Trial court concluded that Congress intended to allow state legislature to provide for mineral leases of less than 20 years without appraisalment, advertising, bidding and public auction.

B. Arizona Supreme Court (1986-1987)

Kadish v. Arizona State Land Dept., 155 Ariz. 484, 747 P.2d 1183 (1987). Appeal by Kadish, et al.

1. Procedure: Briefs filed in Court of Appeals, Div. 1; transferred to Arizona Supreme Court on Appellants' motion because the issues were matters of first impression and substantial statewide importance.
2. Parties: Same as in trial court, except the New Mexico Commissioner of State Lands was permitted to file an Amicus Curiae brief in support of appellants.
3. Decision: Held, the state statute fixing a flat rate royalty for mineral leases issued by the State Land Department violates the appraisal and true value provisions of the Arizona Enabling Act and comparable provisions of the State Constitution. (Opinion appears not to apply the advertisement and public auction requirements of Enabling Act and State Constitution.)
4. Mining companies argued that higher royalty rates discourage exploration and development and result in lower production and revenues. Not in the best long-term interests of the state.

Arizona Supreme Court responded:

--- Market forces determine production and royalty rates; a market royalty rate does not have a significant adverse effect on production.

--- State statute prescribed a "maximum" royalty rate, rather than a minimum.

--- The flat rate royalty was calculated on "net value," unlike most mineral lease royalties.

C. U. S. Supreme Court (1988-1989)

ASARCO Incorporated v. Kadish, 490 U.S. 605, 104 L. Ed.2d 696 (1989).

1. Writ of Certiorari to Arizona Supreme Court granted by U.S. Supreme Court.

2. Parties:

a. Petitioners:

ASARCO Incorporated, Magma Copper Company, Can-Am Corporation and James P. L. Sullivan.

b. Respondents (plaintiffs/appellants below)

c. Amicus Curiae

--- Clinton Campbell Contractors, Inc.; dba Phoenix Brick Yard in support of ASARCO.

--- States of California, Idaho, Montana, Minnesota, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, Washington and Wyoming in support of Kadish.

--- State of Arizona in support of Kadish.

--- United States in support of Kadish.

3. Decision - May 30, 1989

Held, the sale or lease of mineral lands granted to the State of Arizona by Congress under the Enabling Act and the Jones Act of 1927 "must substantially conform to the mandatory requirements set out in the Enabling Act." Seems to require application of public auction and bidding requirement as well as appraisement and true value requirements.

Court was unanimous on this issue. (Justice O'Connor did not participate.)

Justice Kennedy, writing for the majority, noted potential difficulty in appraising mineral rights. But Court had previously held mineral rights subject to valuation in condemnation proceedings. "Whatever the difficulties may be in making such appraisals with complete accuracy, it does not defeat the existence of a 'market value' in mineral rights."

- D. Effect of decision on existing leases was not clear from decision. Whether existing leases were void or merely their royalty clauses, remained uncertain.

III. New Mineral Leasing Statutes (6/15/89)

A. Rental and Royalty (A.R.S. §27-234, amended)

- 1. Requires appraised annual rental.
 - a. Not less than \$.75 per acre.
 - b. Appraise only non-mining uses of comparable land.
- 2. Requires as a royalty "fee" an appraised royalty rate for each lease. Prescribes a minimum royalty rate of 2% of gross value of recovered minerals or mineral products.
 - a. Value is based on "recovered" minerals rather than "contained" minerals.
 - Lessee gets a break; but requires production and processing experience in order to establish recovery rate.
 - (1) Royalty rate must be the appraised true value of the leasehold interest for each lease, established per appraisal standards and expressed as a percent of gross value.
 - b. Point at which gross value is to be determined:
 - (1) Gross value shall be based on published price cited in commodities or trade indices or trading journals.
 - (2) If there is no published price, the gross value shall be established by the total amount paid at first point of sale or value at point of use.

3. Appraisal standard (A.R.S. §27-234.C.)
 - a. Appraise the "right to extract minerals from the trust land"
 - (1) Use standard appraisal methodology.
 - (2) Use comparable mining leases to the extent feasible.
 - b. For mines existing prior to 6/8/89, royalty shall not be less than would have been paid under pre-1989 statute.
4. Reappraisal of royalty rate (A.R.S. §27-234.C.)
 - a. Must appraise before issuing mineral lease;
 - b. Reappraise at end of first year of commercial production.
 - c. Reappraise at time lease is renewed.
 - d. Reappraise when there is change in mineral recovery technology or increased ore reserves substantially change value of leasehold interest.
5. Cost of appraisal: Assessed to lessee and added to amount due as rental.

B. Commissioner's Discretion to Lease (A.R.S. §27-233.A.)

Commissioner may deny a lease application if not in the best interests of the trust because:

1. Not made in good faith.
2. Mining would not be highest and best use of land.
3. Benefit would be less than reduction in value of surrounding state land.
4. Operation would violate state or federal law.
5. Mining activity will create liability to state greater than income from mining.

C. New Lease Auction (A.R.S. §27-235.A.)

1. Public auction after advertising.
 - a. Not expressly required for existing or new leases.

- b. Advertising optional with Commissioner on new leases if:
 - (1) No mining claim located per A.R.S. §27-231; or
 - (2) An exploration permit or mineral lease has not been renewed or has been terminated.
- 2. Only cash bonus bid is subject to auction.
Rental and royalty must be set by appraisal.
- 3. Discovery: Administrative criteria?

B. The term "mineral" includes mineral compound and mineral aggregate. 1888

27-232. Methods of locating claims; extent of extralateral rights

A. If the mineral deposit is a vein, lode or ledge, it may be located in the manner provided for the location of mineral claims upon the public domain of the United States. Upon obtaining a lease on land so located, as provided in this article, the lessee shall be entitled during the term of the lease to extralateral rights in the discovery vein only to the same extent as similar mineral locations upon the public domain of the United States under the provisions of Title 30, United States Code, section 26 (U.S. revised statutes, section 2322).

B. Any mineral claim, however, may be located in conformity with the lines of the public land survey, embracing not more than twenty acres. In such case the location shall be marked upon the ground by erecting a monument or placing a post extending at least three feet above the surface of the ground at each angle corner of the claim, as nearly as possible, and by placing in each monument, or on each post, a memorandum stating the name of the locator, the name of the claim and designating the corner by reference to cardinal points, and within thirty days thereafter by filing for record in the office of the county recorder of the county in which the claim is located, a notice of location which shall set forth:

1. The name of the locator.
2. The name of the claim.
3. The date of location.
4. The legal description of the land claimed.

C. One copy of the location notice of any claim located pursuant to this section, together with the county recorder's certificate of recordation, shall be filed in the office of the state land commissioner within thirty days after the date of location. 1955

27-233. Preferred right of locator to lease land; discovery work; lease renewal

A. The locator of a lode mining claim or claims on state lands pursuant to this article on approval of the state land commissioner shall have a preferred right to a mineral lease of each claim within ninety days after the date of location. The commissioner may deny the application for a mineral lease for any of the reasons listed in section 27-251, subsection B.

B. The locator of a lode mining claim located pursuant to § 27-232 shall be required to perform the discovery work required by law for mining claims under the laws of the United States within the ninety-day period or an equivalent amount of development drilling of a reasonable value of one hundred dollars on each claim. The development drilling may be centrally located and need not be upon each individual claim, but shall be so located as to be part of a plan of development for the group, and in no event shall the minimum requirement prescribed for each individual claim be dispensed with. The locator shall not receive a lease unless he submits to the state land commissioner satisfactory proof of the performance of such discovery work within such reasonable time as the land commissioner prescribes.

C. Upon application to the commissioner, not less than thirty nor more than sixty days prior to the expiration of the lease, the lessee of mineral lands, if he is not delinquent in the payment of rental or royalty on the date of expiration of the lease, shall have a preferred right to renew the lease bearing even date with the expiration of the old lease for a term of

CHAPTER 2 MINING RIGHTS IN LAND

ARTICLE 3. LEASE OF STATE LANDS FOR MINERAL CLAIMS

- 27-231. Location of mineral claim on state land; definition.
- 27-232. Methods of locating claims; extent of extralateral rights.
- 27-233. Preferred right of locator to lease land; discovery work; lease renewal.
- 27-234. Rent; royalty; appeal; interest; penalty; lien.
- 27-235. Offering leases at auction; terms of lease; termination.
- 27-236. Suspension of royalty rights.
- 27-237. Review by commissioner.
- 27-238. Existing leases.
- 27-239. Inspections, investigations and audits.

ARTICLE 4. MINERAL EXPLORATION PERMITS AND MINERAL LEASES

- 27-251. Application for mineral exploration permit.
- 27-252. Terms of mineral exploration permit.
- 27-253. Renewal of permit.
- 27-254. Mineral lease.
- 27-255. Bond.
- 27-256. Assignment.

ARTICLE 5. LEASE OF STATE LANDS FOR DISPOSITION OF COMMON MINERAL PRODUCTS, MATERIALS AND PROPERTY

- 27-271. Authority to lease; size; terms and conditions; rules and regulations.
- 27-272. Common mineral products, materials and property defined; not locatable or leasable as a claim.
- 27-273. Performance, restoration bonds.
- 27-274. Lease renewal.
- 27-275. Existing leases.
- 27-276. Enforcement.

ARTICLE 3. LEASE OF STATE LANDS FOR MINERAL CLAIMS

27-231. Location of mineral claim on state land; definition

A. Any natural person over eighteen years of age and any other person qualified to transact business in this state who discovers a valuable mineral deposit on any state land may enter upon and locate the deposit as a mineral claim.

twenty years. The commissioner may deny the renewal application for any reason listed in section 27-251, subsection B, paragraphs 1 through 4. 1989

27-234. Rent; royalty; appeal; interest; penalty; lien

A. Before issuing a mineral lease the state land commissioner shall establish the annual land rental for the mineral lease. The rental shall be based on an appraisal that considers only nonmining uses of comparable land. The annual rental:

1. Shall not be less than seventy-five cents per acre.

2. Is payable in advance of executing the mineral lease agreement by the commissioner and at the beginning of each annual period thereafter.

B. In addition to the annual land rental payment, a royalty fee is imposed of at least two per cent based on the gross value of all of the recovered minerals or mineral products. The royalty rate for each mineral lease shall be the appraised true value of the leasehold interests of this state, established according to the appraisal standard prescribed by subsection C of this section and expressed as a percentage of the gross value. The gross value shall be based on the monthly average published unit price for minerals and mineral products as cited in commercial commodities or trading indexes or trading journals as determined by the commissioner and specified in the lease. If a mineral product does not have a published price, the gross value shall be established by reference to the total amount paid at the first point of sale or the value at the point of use.

C. The commissioner shall appraise the right to extract minerals from the trust land before issuing a mineral lease in order to determine whether a royalty rate greater than the minimum rate established by statute is justified to obtain a fair value for the mineral ores or products. At the end of the first year of commercial production, the commissioner shall reappraise the royalty rate to determine if there should be an adjustment, but in no case may the royalty rate be set below the minimum prescribed by subsection B of this section. Royalty rate appraisals shall be conducted according to standard appraisal methodology to establish the value of the leasehold interest of this state based, to the extent feasible, on comparable royalty rates for comparable mineral leases. The royalty rate shall be reappraised at the time a mineral lease is renewed and may be reappraised during the term of the lease if changes in mineral recovery technology or the discovery of new minerals substantially changes the value of the state leasehold interest.

D. For mines existing on state lands on June 8, 1989, the royalty paid under this section shall not be less than the royalty which would have been paid under statutes in effect immediately before June 8, 1989.

E. The costs of all appraisals conducted under this section shall be assessed against the lessee and added to the amount due as rental under this section.

F. The department shall review all state and county property tax assessment information relevant to the mineral lease. The department shall maintain that information on a confidential basis as prescribed by section 42-108.

G. Every mineral lease of state land shall require the lessee to make the following records available on an annual basis:

1. Itemized statements of mineral production.
2. Relevant tax records.

3. Additional relevant records pertinent to appraisal, compliance with the lease and mineral production deemed necessary by the commissioner.

H. The information obtained under subsection G, paragraph 2 of this section and any trade secrets, as defined in section 23-401, are confidential.

I. Mineral lessees shall make monthly royalty payments based on the mineral production activity of the previous month.

J. Appeals of the appraisal decision of the commissioner may be taken pursuant to section 37-215 to the board of appeals, established by section 37-213, which shall affirm, modify or reverse the decision of the commissioner within one hundred eighty days. Decisions of the board of appeals under this subsection are subject to judicial review pursuant to title 12, chapter 7, article 6. As a condition of the appeal, the lessee must continue to make all rental and royalty payments due based on the commissioner's final appraisal decision, and the court shall not stay the commissioner's decision, in whole or in part, pending a final disposition of the case. The state treasurer shall segregate rents and royalties paid while an appeal is pending and shall not distribute such monies to the state general fund or to the trust beneficiaries until the appeal is completed.

K. If a lessee fails to pay rent or royalty, including appraisal costs under subsection C of this section, on or before the date the payment is due, the amount due accrues interest at the rate and in the manner determined pursuant to section 42-134. In addition, if it is determined that the failure to pay is not due to reasonable cause, a penalty of five per cent of the amount found to be remaining due shall be added to the rent or royalty for each month or fraction of a month elapsing between the due date and the date on which it is paid. The total penalty shall not exceed one-third of the rent or royalty remaining due. The penalty so added to the rent or royalty is due and payable on notice and demand from the commissioner.

L. If any rent, royalty, appraisal assessment, interest or penalty is not paid by the lessee when due, the unpaid amounts constitute a lien from the date the amounts become due on all property and rights to property belonging to the lessee that are located on state land. 1989

27-235. Offering leases at auction; terms of lease; termination

A. The state land commissioner may offer mineral leases at public auction, after advertising, for state lands on which a mining claim has not been located or a mineral exploration permit or mineral lease has been terminated or not been renewed by the lessee or permittee. The commissioner may establish by rule the procedure for conducting the auction, but bidding is limited to a cash bonus to be paid in full before the commissioner executes the lease documents. The land rental and royalty rate are not subject to bidding.

B. Every mineral lease of state lands shall be for a term of twenty years.

C. The lease shall confer the right:

1. To extract and ship minerals, mineral compounds and mineral aggregates from the claim located within planes drawn vertically downward through the exterior boundary lines thereof. In case of leases made pursuant to locations under § 27-232, subsection A, the lease shall confer extralateral rights in the discovery vein similar to those given locators upon the public domain of the United States

under the provision of 30 United States Code § 26 (U.S. revised statutes, section 2322).

2. To use as much of the surface as required for purposes incident to mining.

3. Of ingress to and egress from other state lands, whether or not leased for purposes other than mining.

D. Every mineral lease of state lands shall provide for:

1. The performance of annual labor, as required by the laws of the United States, upon each claim or group of claims in common ownership, commencing at the expiration of one year from the date of location, and for furnishing proof thereof to the commissioner.

2. The fencing of all shafts, prospect holes, adits, tunnels and other dangerous mine workings for the protection of public health and safety and livestock.

3. The construction of necessary improvements and installation of necessary machinery and equipment with the right to remove it upon expiration, termination or abandonment of the lease, if all monies owing to the state under the terms of the lease have been paid.

4. The cutting and use of timber and stone upon the claim, not otherwise appropriated, for fuel, construction of necessary improvements, or for drains, roadways, tramways, supports, or other necessary purposes.

5. The right of the lessee and his assigns to transfer the lease.

6. Termination of the lease by the commissioner upon written notice specifically setting forth the default for which forfeiture is declared, and preserving the right to cure the default within a stated period of not less than thirty days.

E. The lessee of any mineral lease, if not delinquent in the payment of rent or royalty to the date of termination, may terminate the lease at any time during its term by giving the commissioner thirty days' written notice of the termination. 1989

27-236. Suspension of royalty rights

The commissioner may, if he deems it in the interest of the state, subordinate the royalty rights of the state under this article, or suspend the operation thereof or of any lease executed under the provisions of this article, in favor of the United States or any agency thereof, for the purpose of facilitating extension of financial aid under the laws of the United States in the development or operation of any mine located upon state lands. 1955

27-237. Review by commissioner

All questions arising between a locator or lessee and the commissioner under this article shall be subject to review as in other cases involving state lands, and the locator's or lessee's right to possess and operate his claim shall continue until the question is finally determined. 1955

27-238. Existing leases

A. Every mineral lease in effect on June 16, 1941 under the provisions of § 2973, Revised Code of 1928, shall remain in effect for the unexpired term for which it was granted, without right of renewal, or, at the option of the lessee, may be superseded by a lease as provided by this article.

B. Every mineral lease and mineral exploration permit issued under this article and article 4 of this chapter which had not expired or been terminated by the department as of June 8, 1989 shall be in effect for the unexpired term for which it was granted. Within one hundred eighty days after June 8, 1989 the state land commissioner shall set the rental and

royalty according to the appraisal standards prescribed by section 27-234 for any mineral lease or mineral exploration permit in effect on June 8, 1989 and that rental and royalty are effective as of December 10, 1987. 1989

27-239. Inspections, investigations and audits

A. The state land commissioner or the commissioner's authorized representative may enter, and the lessee shall maintain access to, the state land held under a mineral lease at reasonable times to inspect the workings, improvements and other facilities used to extract or sever minerals, common mineral products, materials or property from state lands.

B. The commissioner or his authorized representative may enter at reasonable times to:

1. Obtain factual data or access to records pertinent to mineral production required to be kept under the terms of the lease.

2. Otherwise ascertain compliance with law and the terms of the lease.

C. Inspections, investigations and audits under subsection A shall be on reasonable notice to the lessee unless reasonable grounds exist to believe that notice would frustrate the enforcement of law or the terms of the lease. The commissioner may, and if required by law shall, apply for and obtain warrants for entry and inspection.

D. The commissioner may require a lessee to appear at reasonable times and on reasonable notice at the commissioner's office and produce such records and information as are specified in the notice to determine compliance with the terms of the lease.

E. The commissioner shall provide to the lessee a written report of each inspection, investigation and audit under this section.

F. Tax records and trade secrets, as defined in section 23-401, obtained under this section are confidential. 1989

ARTICLE 4. MINERAL EXPLORATION PERMITS AND MINERAL LEASES

27-251. Application for mineral exploration permit

A. Any natural person over eighteen years of age and any other person qualified to transact business in this state may apply to the state land commissioner for a mineral exploration permit on the state land in one or more of the rectangular subdivisions of twenty acres, more or less, or lots, in any one section of the public land survey. Such application shall be in writing and signed by the applicant, or an authorized agent or attorney for the applicant, and shall contain the name and address of the applicant, a description according to the public land survey of the state land for which the applicant seeks a mineral exploration permit, and such other information as the commissioner may prescribe by rule. The application shall be filed with the state land department and shall be accompanied by payment to the department of a filing fee as prescribed by section 37-108. Each application meeting the requirements of this section shall be stamped by the department with the time and date it is filed with the department. The application shall have priority over any other application for a mineral exploration permit involving the same state land which may be filed with the department subsequent to such time and date, and such land shall be deemed withdrawn from location of mineral claims as long as the application is pending.

B. Not less than thirty days nor more than forty-five days from the filing of the application with the department, provided there is no prior application for a mineral exploration permit involving the same state land then pending before the department, or if such prior application is then pending but is subsequently cancelled, not more than fifteen days after it is cancelled, the department shall mail to the applicant at the address shown on the application a written notice designating the state land described in the application which, at the time the application was filed with the department, was open to entry and location as a mineral claim or claims upon discovery of a valuable mineral deposit thereon, the amount of rental required to be paid for the mineral exploration permit as herein provided, and whether a bond will be required under the provisions of section 27-255 as a condition to issuance of such permit. If, within fifteen days after the mailing of such notice, the applicant pays to the department as rental for the permit the amount of two dollars per acre for each acre of state land designated in the notice and files with the department the bond, if any, required under section 27-255, and if the commissioner finds that issuing the permit is in the best interest of the trust, the commissioner shall issue to the applicant a mineral exploration permit for the state land designated in the notice. The commissioner may deny the application for any of the following reasons:

1. The application was not made in good faith.
2. The proposed prospecting or possible future mining activities would not be the highest and best use of the trust lands.
3. The value and income potential of surrounding trust lands would be adversely affected and the benefit from proposed prospecting and future mining activity cannot reasonably be expected to be greater than the diminished value to those surrounding trust lands.
4. The proposed operations would violate applicable state or federal law.
5. The commissioner determines that the proposed prospecting activities or possible future mining activities will create a liability to the state greater than the income from the proposed operations.

C. During the period such mineral exploration permit is in effect no person except the permittee and the authorized agents and employees of the permittee shall be entitled to explore for minerals on the state land covered by the permit, and no mineral claim or mineral lease shall be located or issued on such land except as provided in this article. If the applicant fails to make the payment or furnish the bond within the period of fifteen days, the application shall be deemed cancelled and of no further effect. 1990

27-252. Terms of mineral exploration permit

A. Every mineral exploration permit shall be for a term of one year from the date of issuance, subject to renewals as provided in this article for an aggregate of not to exceed five years from such date, and shall give to the permittee the rights, subject to the terms and conditions, as follows:

1. During the period the permit is in force and effect, the permittee shall have the exclusive right to explore for minerals within the state land covered by the permit, and to apply for and obtain a mineral lease or leases to the land.

2. The permittee shall have those surface rights necessary for the prospecting and exploration for mineral on the state land covered by the permit, but may remove from the land only that amount of min-

eral required by the permittee for sampling, assay and metallurgical testing purposes.

3. The permittee shall have the right of ingress to and egress from the land covered by the permit across other state lands but only along routes first approved by the commissioner.

4. The permittee shall be liable to and shall compensate the owner and lessee of the surface of the state land covered by the permit, or across which the permittee exercises the right of ingress and egress, for any loss to such owner and lessee from damage or destruction caused by the permittee, his or its agents or employees, to grasses, forage, crops or improvements upon such state land.

5. The permit shall terminate automatically as of the end of any annual period from and after the date of issuance thereof unless during such annual period the permittee shall have expended in exploration for valuable mineral deposits on the state land covered by the permit not less than the amount per acre provided in this article or paid to the department a sum equal thereto, and prior to expiration of such annual period shall have filed with the department an application for renewal for the ensuing annual period, and an affidavit showing such expenditure, together with such other proof in support thereof as the commissioner by regulation may prescribe. The amount to be so expended or paid to the department during each of the first two annual periods in which such permit may be in effect shall be not less than ten dollars for each acre of state land covered by the permit at the commencement of such annual period, and the amount to be so expended or paid to the department during each of the last three annual periods in which such permit may be in effect shall be not less than twenty dollars for each acre of state land covered by the permit at the commencement of such annual period. Prior to termination of any such annual period, the permittee may, by instrument in writing filed with the department, release from the permit the acreage covered thereby and contained within one or more rectangular subdivisions of twenty acres, more or less, or lots, according to the lines of the public land surveys.

6. When a permittee has an interest in one or more contiguous properties for which he or she holds a mineral exploration permit, such permittee may group such permits and expend the sum required by this article under a common plan of development on one or more of the properties for the benefit of all if the total area of such contiguous property shall not exceed three miles on a side.

7. Upon termination of the mineral exploration permit, other than by issuance of a mineral lease, the permittee shall submit to the department the following information, which shall not include any chemical analysis or other identification of minerals, concerning any drill holes or wells drilled on state land covered by the permit:

- (a) Total depth.
- (b) Lithologies and depths of lithologic boundaries encountered in the hole.
- (c) Logs of surveys made of the hole including gamma ray, resistivity, caliper and deviation surveys.

8. Drill hole information shall be confidential for one year after termination of the permit and such period of confidentiality shall be extended for an additional year upon the request of the permittee.

9. Any expenditures in exploration for valuable mineral deposits made in excess of the requirements of this article during any annual period of the permit

may be credited against expenditure requirements of successive annual periods of the permit.

10. In lieu of making expenditures in exploration, the permittee may elect to make a money payment of the amounts required for expenditures in exploration for valuable mineral deposits to the department.

B. Upon any partial or total relinquishment, or the cancellation or expiration of the permit other than by issuance of mineral lease, the permittee shall fill any holes, ditches or other excavations, as may be required by the commissioner and so far as reasonably possible, restore the surface to its former condition.

C. As used in this article, the term "exploration" shall mean activity conducted upon the state land covered by an exploration permit to determine the existence or nonexistence of a valuable mineral deposit, including but not limited to geological, geochemical or geophysical surveys conducted by qualified experts, and drilling, sampling and excavation, together with the costs of assay and metallurgical testing of samples from such land. 1975

27-253. Renewal of permit

The holder of an exploration permit may, prior to expiration of the annual period for which such permit was issued, or prior to expiration of the annual period for which such permit was renewed, file with the department an application for renewal of such permit for the ensuing annual period. No such application for renewal shall be filed, nor shall the permit be renewed, for more than four successive annual periods following expiration of the annual period for which such permit was issued. No rental shall be payable for the first annual period for which a permit may be renewed. The rental for each of the three subsequent annual periods following the first annual period for which a permit may be renewed shall be one dollar for each acre of state land for which the application for renewal is filed. Upon receipt by the department of the application for renewal, and the affidavit of expenditure of the required amount in exploration during the current annual period or a sum equal thereto, together with such other proof in support of such expenditure as the commissioner by regulation may prescribe, and payment to the department of the rental for the ensuing annual period, all prior to expiration of the current annual period, the commissioner shall issue a renewal of the permit for the ensuing annual period. 1975

27-254. Mineral lease

Following discovery of a valuable mineral deposit upon the state land covered by a mineral exploration permit within a rectangular subdivision of twenty acres, more or less, or lot, of the public land survey, the permittee may apply to the commissioner for a mineral lease upon the state land within such rectangular subdivision, or lot, and such land shall, for the purpose of the application and any mineral lease issued pursuant to such application, constitute a mineral claim without extra-lateral rights, and shall be deemed to have been located as of the date of filing the application for the mineral lease. Upon receipt of an application from the permittee for a mineral lease, and satisfactory proof of discovery of a valuable mineral deposit, the commissioner shall issue a mineral lease to the applicant for the mineral claim or claims covered by the application. From and after the date of issuance of a mineral lease, the mineral claim or claims covered by such mineral lease shall be deemed to be excluded from the prospecting permit. Upon application to the commissioner, not less than thirty nor

more than sixty days prior to the expiration of the lease, the lessee, if not delinquent in the payment of rental or royalty on the date of expiration of the lease, shall have a preferred right to renew the lease bearing even date with the expiration of the old lease for a term of twenty years. 1961

27-255. Bond

The commissioner, in his discretion, may require the applicant for a mineral exploration permit, prior to issuance of such permit, to file with the commissioner a surety bond, in form, amount, and with surety approved by the commissioner, conditioned upon the prompt payment to the owner and lessee of the surface of state land to be covered by the permit, or across which the permittee exercises the right of ingress or egress, for any loss to such owner or lessee from damage or destruction caused by the permittee, his or its agents or employees, to grasses, forage, crops and improvements upon such state lands. The commissioner may also require the permittee to furnish bond, in a reasonable amount, to be fixed by the commissioner, conditioned that the permittee will guarantee restoration of the surface of the land described in the mineral exploration permit to its former condition upon any partial or total relinquishment of such lands, or the cancellation or expiration of the permit other than by issuance of a mineral lease. 1961

27-256. Assignment

Any mineral exploration permit issued hereunder may be assigned in whole or in part by the permittee, but such assignment shall not become effective unless and until a copy thereof is filed with the department and is approved by the commissioner. The assignee shall succeed to all of the rights and shall be subject to obligations of the permittee under the mineral exploration permit. 1961

ARTICLE 5. LEASE OF STATE LANDS FOR DISPOSITION OF COMMON MINERAL PRODUCTS, MATERIALS AND PROPERTY

27-271. Authority to lease; size; terms and conditions; rules and regulations

A. The state land department may execute leases for the severance, extraction or disposition of common mineral products, materials and property in or upon state lands.

B. A lease shall be comprised of not more than one legal subdivision of forty acres, more or less, or lot of the public land survey and shall provide for:

1. A term of not more than ten years.
2. A rental of not less than one dollar per acre per year, payable in advance.
3. Payment, at the time of severance, extraction or disposition, as royalty to the department, of a consideration not less than the true appraised value of the common mineral products, materials or property.
4. The right of termination by the department at the end of any lease year during which production in paying quantities was not had from the leased premises, such failure being deemed by the department to have been due to lack of diligence or good faith on part of lessee.
5. The right of the lessee to assign the lease, provided that such assignment shall not become effective unless and until a copy thereof is filed with the department and is approved by the commissioner as being in the best interests of the state.

6. Other terms and conditions as the department may deem for the best interests of the state not in conflict with the enabling act, constitution and laws of this state.

C. The state land department shall adopt rules and regulations necessary to the administration of this article.

1967

27-272. Common mineral products, materials and property defined; not locatable or leasable as a claim

A. The term, "common mineral products, materials and property", as used in this article, includes cinders, sand, gravel and associated rock, fill-dirt, common clay, disintegrated granite, boulders and loose float rock, waste rock and materials of similar occurrence commonly used as aggregate, road material rip-rap, ballast, borrow, fill and for similar purposes.

B. Common mineral products, materials and property shall not be subject to location as a claim as provided by title 27, chapter 2, article 3 nor to lease of such a claim as provided by title 27, chapter 2, articles 3 and 4.

1967

27-273. Performance, restoration bonds

A. The commissioner may require the lessee to post a cash deposit or surety bond to guarantee the payment of all monies due under the lease as royalty to the state.

B. The commissioner shall require the lessee to furnish bond, in a reasonable amount, to be fixed by the commissioner, conditioned that the lessee will guarantee restoration of the surface of the land described in the lease to a reasonable condition in accordance with good mining practices. The commissioner shall also require the lessee to file with the department a surety bond in the form, amount, and with surety approved by the commissioner, conditioned upon prompt payment to the owner or lessee of the surface of the state land covered by the lease, or across which the lessee exercises the right of ingress, for any loss to such owner or lessee from damage or destruction caused by the lessee, his or its agents or employees to grasses, forage, crops and improvements upon such lands.

1967

27-274. Lease renewal

Upon application to the commissioner, not less than thirty days nor more than sixty days prior to the expiration of the lease, the lessee of state lands, for the purposes of this article, if he is not delinquent in the payment of rental or royalty on the date of expiration of the lease, shall have a preferred right to renew the lease bearing even date with the expiration of the old lease.

1967

27-275. Existing leases

Every lease of a mineral claim held solely, or in part, for the purpose of extracting and shipping common mineral products, materials and property from state lands and in effect on the effective date of this article shall remain in effect, subject to the provisions of article 3, chapter 2 of title 27.

1967

27-276. Enforcement

Leases issued and executed under this article are subject to the enforcement provisions prescribed by section 27-239.

1989



FIFE SYMINGTON
GOVERNOR

Arizona
State Land Department

1616 WEST ADAMS
PHOENIX, ARIZONA 85007



M.J. HASSELL
STATE LAND COMMISSIONER

HANDOUTS

Michael J. Rice
Manager, Minerals Section

LEGAL CITATIONS

§A.R.S. 27-234 Subsection C

The commissioner shall appraise the right to extract minerals from the trust land before issuing a mineral lease in order to determine whether a royalty rate greater than the minimum rate established by statute is justified to obtain a fair value for the mineral ores or products. At the end of the first year of commercial production, the commissioner shall reappraise the royalty rate to determine if there should be an adjustment, but in no case may the royalty rate be set below the minimum prescribed by Subsection B of this section. ROYALTY RATE APPRAISALS SHALL BE CONDUCTED ACCORDING TO STANDARD APPRAISAL METHODOLOGY TO ESTABLISH THE VALUE OF THE LEASEHOLD INTEREST OF THIS STATE BASED, TO THE EXTENT FEASIBLE, ON COMPARABLE ROYALTY RATES FOR COMPARABLE MINERAL LEASES. The royalty rate shall be reappraised at the time a mineral lease is renewed and may be reappraised during the term of the lease if changes in mineral recovery technology or the discovery of new minerals substantially changes the value of the state leasehold interest.

§A.R.S. 27-239 Inspections, Investigations and Audits

- A. The state land commissioner or the commissioner's authorized representative may enter, and the lessee shall maintain access to, the state land held under a mineral lease at reasonable times to inspect the workings, improvements and other facilities used to extract or sever minerals, common mineral products, materials or property from state lands.
- B. The commissioner or his authorized representative may enter at reasonable times to:
 - 1. Obtain factual data or access to records pertinent to mineral production required to be kept under the terms of the lease.
 - 2. Otherwise ascertain compliance with law and the terms of the lease.
- C. Inspections, investigations and audits under Subsection A shall be on reasonable notice to the lessee unless reasonable grounds exist to believe that notice would frustrate the enforcement of law or the terms of the lease. The commissioner may, and if required by law shall, apply for and obtain warrants for entry and inspection.

- D. The commissioner may require a lessee to appear at reasonable times and on reasonable notice at the commissioner's office and produce such records and information as are specified in the notice to determine compliance with the terms of the lease.
- E. The commissioner shall provide to the lessee a written report of each inspection, investigation and audit under this section.
- F. Tax records and trade secrets, as defined in Section 23-401, obtained under this section are confidential.

-Reports-

Statutory

27-234(G)

- 1) Itemized statements of mineral production
- 2) Relevant tax records
- 3) Additional relevant records pertinent to appraisal, compliance with the lease and mineral production deemed necessary by the Commissioner

Administrative Rule

R12-5-705(c)

. . . a detailed report filed with the Commissioner which sets fully:

- 1) The location of the work performed in relation to the point of discovery and boundaries of the claim
- 2) The nature, extent and cost, thereof,
- 3) The basic findings, therefrom, and
- 4) The name, address, and professional background of the persons conducting the work

R12-5-706 Annual Lease Report

- a) Location and description of work performed
- b) Improvements
- c) Cost

APPRAISAL QUESTIONNAIRE

(Confidential pursuant to ARS § 27-234 Subsection H)

The purpose of this questionnaire is to obtain information about your state mineral lease in order to assist in the appraisal and determination of a royalty rate as required by Senate Bill 1310 (ARS § 27-238 Subsection B). A copy of the new mineral leasing legislation has been enclosed with the questionnaire.

The scope of the questionnaire extends from exploration to mining and also encompasses pertinent financial matters. Where you do not have the information needed to complete the questionnaire, please complete only those parts for which you have supporting documentation. For those properties which have or are now producing, please submit Arizona Department of Revenue form 61-A for the production year last reported. Submit, also, any other attachments necessary to complete the questionnaire. There need be only one questionnaire submitted for each mine or group of leases covering the same mineral deposit.

Lessee Name _____

Address _____

Phone # _____

MINERAL LEASE NUMBER(S) _____

I. PROPERTY DESCRIPTION

A. Type of deposit (Placer, vein, disseminated, etc.)

B. Current development status (X)

1. Exploration _____

2. Pre-mining Development _____

3. Mining _____ (Indicate date of first production) _____

C. Indicate which of the following classifications best describes the ore reserves (see enclosed Bureau of Mines Classification).

1. Inferred _____

2. Indicated _____

3. Measured _____

D. Commodities produced or to be produced

1. Primary Commodity _____

2. Co-product _____

3. By-product _____

E. Cut-off grade or composition specifications (Purity e.g.) _____

F. Reserves _____ tons

Provide the Department with an ore reserve estimation along with calculations (grade and tonnage). Include in this attachment the range of grades, average grade, assumptions, and methods of projection.

G. Please provide an accurate figure of expenditures made to date. In doing so, differentiate between direct and indirect or general overhead costs. It is important that you answer this question regardless of development status.

Direct \$ _____ Indirect \$ _____

H. Point of sale (F.O.B. mine, smelter, etc.) _____

I. Source of commodity price (Sales contract; Handy & Harmon e.g.), and price per unit recovered. Use historical price if property has ever produced. For all other properties, indicate commodity and contemplated source (5 year average).

1. Primary Commodity _____

Source _____ Price \$ _____

2. Co-product _____

Source _____ Price \$ _____

3. By-product _____

Source _____ Price \$ _____

J. Mining Method (X)

1. Surface _____ 3. In-situ _____
2. Underground _____ 4. Other _____

K. Beneficiation and recovery methods. Provide flow chart.

L. Historical stripping ratio _____

Historical cost per ton \$ _____

M. Historical production rate _____ tons of ore per year

N. Historical grade _____ primary commodity

O. Projected mine life _____ years

P. Projected operating days per year _____

Q. Mine Plan production rate _____ tons per day or year

R. If production rates, ore grades, or stripping ratios will vary over mine life, differentiate various rates over time (submit attachment).

S. Existing stockpiles _____ tons

T. If the mine has or will involve State and non-state reserves, what percent of the reserves are State-owned? _____%

II. INVESTMENTS

Figures for this section of the questionnaire should reflect expenditures to date. Where future capital expenditures are anticipated, please complete an additional copy of this section.

A. Exploration

Total Cost \$ _____ State Cost \$ _____

1. Beginning year of investment _____

2. Ending year _____

CAPITALIZATION METHOD

AMOUNT

Expensed capital \$ _____

Capitalized capital \$ _____

Amortized capital \$ _____

Years amortized _____

Year amortization begins _____

B. Land Acquisition

Total Cost \$ _____ State Cost \$ _____

1. Beginning year of value _____

2. Ending year of value _____

CAPITALIZATION METHOD

AMOUNT

Capitalized capital \$ _____

Amortized capital \$ _____

Years amortized _____

Year amortization begins _____

C. Mine Preparation and Development

Total Cost \$ _____ State Cost \$ _____

1. Beginning year of value _____

2. Ending year of value _____

CAPITALIZATION METHOD

AMOUNT

Expensed capital \$ _____

Deferred capital \$ _____

Amortized capital \$ _____

Years amortized _____

Year amortization begins _____

D. Mining, Processing, and Infrastructure Investments

Total Investment \$ _____ State Cost \$ _____

Complete for each of the referenced categories in accordance with the investment depreciation method (mid-point classification).

1. Beginning year of value _____
2. Ending year of value _____
3. Investment depreciation period _____
4. Year depreciation begins _____
5. Investment salvage value \$ _____

<u>DEPRECIATION METHOD</u>	<u>AMOUNT</u>	<u>REPLACEMENT COST</u>
Straight line	\$ _____	\$ _____
Double declining balance	\$ _____	\$ _____
Double declining balance with switchover to straight line	\$ _____	\$ _____
150% declining balance with switchover to straight line	\$ _____	\$ _____
Other	\$ _____	\$ _____

E. Miscellaneous Capital Investment

Total Investment \$ _____

1. Beginning year of value _____
2. Ending year of value _____

F. Loans (Complete this section for each existing loan)

Total Amount \$ _____

1. Beginning year of value _____
2. Ending year of value _____
3. Loan term _____
4. Loan interest rate _____
5. Year loan payback begins _____

- 6. Loan payback method (X)
 - a. Amortized payments _____
 - b. Fixed interest payments with balloon payment _____
- 7. Pre-payback interest (X)
 - a. Compound interest to principal until payback begins _____
 - b. No interest prior to beginning of payback _____
- G. Working capital (60 day) \$ _____

III. OPERATING COSTS

Complete for each commodity. If unable to separate costs, submit calculations showing method of expressing in equivalent costs (silver expressed in equivalent gold and proration of costs per ounce of silver e.g.). If ore is being commingled, please further provide information relevant to cost distribution.

A. Mining cost per commodity unit (5 year average cost)

<u>COMMODITY</u>	<u>AVG GRADE</u>	<u>HISTORICAL COST</u>	<u>ESTIMATED COST</u>
1) _____	_____	\$ _____	\$ _____
2) _____	_____	\$ _____	\$ _____
3) _____	_____	\$ _____	\$ _____

Years used as basis for historical costs _____

Present Cost \$ _____

Mine Plan production rate _____ tons per day or year

Commodity units mined _____ per day or year

B. Milling cost per commodity unit (5 year average cost)

<u>COMMODITY</u>	<u>MILL FEED GRADE</u>	<u>HISTORICAL COST</u>	<u>ESTIMATED COST</u>
1) _____	_____	\$ _____	\$ _____
2) _____	_____	\$ _____	\$ _____
3) _____	_____	\$ _____	\$ _____

Years used as basis for historical costs _____

Present Cost \$ _____

Mill capacity _____ tons per day

Mill recovery rate _____%

Mine Plan throughput _____

Commodity units milled _____

C. Smelting cost per commodity unit (5 year average cost)

	<u>MILL CONCENTRATE</u>		<u>HISTORICAL COST</u>	<u>ESTIMATED COST</u>
	<u>COMMODITY</u>	<u>GRADE</u>		
1)	_____	_____	\$ _____	\$ _____
2)	_____	_____	\$ _____	\$ _____
3)	_____	_____	\$ _____	\$ _____

Years used as basis for historical costs _____

Present cost \$ _____

Smelter recovery rate _____%

D. Refining cost per commodity unit (5 year average cost)

	<u>SMELTER CONCENTRATE</u>		<u>HISTORICAL COST</u>	<u>ESTIMATED COST</u>
	<u>COMMODITY</u>	<u>GRADE</u>		
1)	_____	_____	\$ _____	\$ _____
2)	_____	_____	\$ _____	\$ _____
3)	_____	_____	\$ _____	\$ _____

Years used as basis for historical costs _____

Present cost \$ _____

Refinery recovery rate _____%

E. Leaching cost per commodity unit (Mine - 5 year average cost)

<u>COMMODITY</u>	<u>ORE GRADE</u>	<u>PRECIPITATE GRADE</u>	<u>HISTORICAL COST</u>	<u>ESTIMATED COST</u>
1) _____	_____	_____	\$ _____	\$ _____
2) _____	_____	_____	\$ _____	\$ _____
3) _____	_____	_____	\$ _____	\$ _____

Years used as basis for historical costs _____

Present cost \$ _____

Units precipitated per unit volume _____

Smelter concentrate grade _____

Refiner recovery _____ %

F. Operating cost per input leached unit processed (5 year average cost)

1. Smelter \$ _____

2. Refiner \$ _____

IV. TRANSPORTATION COSTS (Cost per commodity unit - 5 year average cost)

A. Mill to smelter \$ _____

B. Smelter to refiner \$ _____

C. Transportation to market \$ _____

V. Overhead costs (Cost per commodity unit - 5 year average cost)

A. Primary commodity \$ _____

Under the penalties of perjury, I do solemnly swear or affirm that I have examined this questionnaire, including accompanying attachments and statements, and to the best of my knowledge, information, and belief, it is true, correct, and complete.

Dated this _____ day of _____, 19_____

Signature _____

Title _____

Company _____

Notary

My Commission Expires 19_____

If you have questions, contact Mike Rice, (602) 542-4628, of the Arizona State Land Department.

DEFINITIONS

RESERVE CLASSIFICATION: Geological Survey Circular 831

- Inferred - Estimates are based on an assumed continuity beyond measured and/or indicated resources, for which there is geologic evidence. Inferred resources may or may not be supported by samples or measurements.
- Indicated - Quantity and grade and/or quality are computed from information similar to that used for measured resources, but the sites for inspection, sampling, and measurement are farther apart or are otherwise less adequately spaced. The degree of assurance, although lower than that for measured resources, is high enough to assume continuity between points of observation.
- Measured - Quantity is computed from dimensions revealed in outcrops, trenches, workings, or drill holes; grade and/or quality are computed from the results of detailed sampling. The sites for inspection, sampling, and measurement are spaced so closely and the geologic character is so well defined that size, shape, depth, and mineral content of the resource are well established.

CAPITALIZATION METHODS: Computer-Assisted Mineral Appraisal & Feasibility, Barnes, M.P., 1980

- Capitalized - The term "capitalized" means that the investment cost is not deducted as an operating expense in the year that it is incurred, but is spread out over a period of years through depreciation, depletion, or amortization deductions.
- Amortized - Amortization permits the recovery of specific capital expenditures in a manner similar to straight-line depreciation. Research and development expenses is an example of capital expenses that may be amortized for tax purposes.
- Expensed - Costs of doing business which are not capitalized, such as labor and operating costs, are expensed costs. They are written off for tax purposes in the year they occur.
- Deferred - This method recovers investment costs in direct proportion to its use. An example of this method would be the units of production depreciation method.

ARIZONA STATE LAND DEPARTMENT
Nonrenewable Resources & Minerals

Plan of Operation

The following information must be submitted to, and approved by the Department prior to initiating exploration or mining activities on State land. The plan is approved for a period of one year beginning on the date approved. Any change in the below described operations must first be approved by the Department.

Plan evaluation and approval may require 30 days.

PROSPECTING PERMIT OR MINERAL LEASE NUMBER(S) _____

NAME IN WHICH ISSUED _____

NAME OF OPERATOR _____ TELEPHONE _____

ADDRESS OF OPERATOR _____

NAME OF FIELD REPRESENTATIVE _____
(If different than operator include address and telephone)

1) LAND DESCRIPTION AND MAP

Attach as Exhibit A to this Plan a topographic map of the referenced property.

County _____ Township _____ Range _____ Section(s) _____

2) PERIOD OF OPERATION

The operation is proposed to begin on _____ and end on _____.
If operations are proposed to exceed one year, an addendum to this plan must be filed prior to the plan expiration date.

3) ACCESS

Show on Exhibit A existing and proposed routes. Describe in detail the extent of all improved or newly constructed access. Note any locked gates.

4) VEHICLES AND EQUIPMENT

List by type and size all vehicles and equipment which will be used in connection with the operation. Include the capacity of concentrators for placer operations.

5) SCOPE AND TYPE OF OPERATION

Describe the type and extent of the operation to be performed. Include the estimated area of disturbance and provide detailed information for any earth moving or site clearance operations. For placer type exploration include the amount of material to be processed from each test site, and the dimension of test sites.

Estimated area of disturbance: _____

6) AFFECTED LAND

Indicate to the nearest 300 feet the location of all proposed prospecting sites (Exhibit A). If necessary complete Exhibit B or provide coordinate description (topographic grid or distance from section corner). For placer type exploration include the location of concentrators.

Coordinate description: Submit as an attachment.

7) DRILLING

For all drilling operations indicate the type of drilling operation, drilling medium (air, water e.g.), hole diameter, and proposed total depth.

* Hole I.D.	Total Depth	Hole I.D.	Total Depth	Hole I.D.	Total Depth

If drilling is anticipated indicate the method of plugging and abandonment. Indicate the marsh funnel viscosity if applicable.

8) WATER USE

If the use of water is required, describe the location and quantity to be used.

9) RECLAMATION

Describe actions taken to minimize environmental impacts and state plans for reclamation of disturbed areas. If applicable include measures for erosion control, recontouring, seed bed preparation, method of seeding, seed species, etc. Unless otherwise approved reclamation is to be completed within the approved plan period of one year.

10) ANTIQUITIES AND NATIVE PLANTS

If required, the applicant agrees to obtain archaeological clearance prior to the following surface disturbance:

A. Prospecting Permit: All land surface affected by exploration activities including access roads.

B. Mineral Lease: All acreage under application. The applicant will be directly contacted by the Arizona State Museum.

Archaeological clearance must be obtained through the Arizona State Museum.

* Hole I.D. - Identification number

10) ANTIQUITIES AND NATIVE PLANTS (cont.)

If the destruction or removal of protected plants is necessary to enjoy the privileges of a permit or lease, the applicant agrees to obtain written permission from the Arizona Commission of Agriculture and Horticulture. The applicant also agrees to purchase said plants from the Arizona State Land Department. Native plants are as described under the Arizona Native Plant Law.

APPLICANT: _____
Signature and Date

Applicant must be the permit holder or duly authorized representative.

Following the Department's evaluation of this plan, two copies will be sent to the applicant noting any conditions which may be required by the Department. The applicant shall sign and return one copy which will attach to, and become a part of, the permit or lease.

CONDITIONS OF APPROVAL: _____

Applicant agrees to abide by the methods and extent of the operations described herein. Applicant also agrees to abide by the above listed CONDITIONS OF APPROVAL.

APPLICANT: _____
Signature and Date

FOR DEPARTMENT USE ONLY

PLAN NUMBER _____

BOND AMOUNT _____

APPROVED FOR THE PERIOD: BEGINNING _____ EXPIRING _____

APPROVED BY: _____

REASONS FOR DENIAL: _____

DATE OF PERMIT OR LEASE ISSUE: _____

DATE LAST PLAN SUBMITTED: _____ PLAN NUMBER _____

REMARKS: _____

ANNUAL ROYALTY INCOME TO THE TRUST

(FOUR YEAR AVERAGE 1987-1991)

<u>COMMODITY</u>	<u>NUMBER OF PRODUCING MINES</u>	<u>ROYALTY INCOME</u>
Copper	2	\$4,150,000
Limestone/ Quartzite	1	\$31,800
Clay	2	\$21,200
Gypsum	1	\$3,900
Slate	1	\$1,800
Marble	1	\$750
Gold	1	\$600
Agate	1	\$18

*of particular
interest
J. R. &
Rice, M*

**ABC Mining Company
Royalty Sensitivity Analysis
XYZ Mine**

	-----Index Price Range-----					
Index Price (1)	(Floor) 0.8000	0.9400	1.0800	1.2200	1.3600	(Ceiling) 1.5000
Production	1,000	1,000	1,000	1,000	1,000	1,000
Gross Value	800	940	1,080	1,220	1,360	1,500
Royalty Rate (2)	0.0200	0.0320	0.0440	0.0560	0.0680	0.0800
Royalty	16	30	48	68	92	120

Calculation of Royalty Rate

Index Price	0.8000	0.9400	1.0800	1.2200	1.3600	1.5000
Base Price	0.8000	0.8000	0.8000	0.8000	0.8000	0.8000
	0.0000	0.1400	0.2800	0.4200	0.5600	0.7000
X Factor (3)	0.0857	0.0857	0.0857	0.0857	0.0857	0.0857
Supplemental Rate	0.0000	0.0120	0.0240	0.0360	0.0480	0.0600
Minimum Royalty Rate	0.0200	0.0200	0.0200	0.0200	0.0200	0.0200
Royalty Rate	0.0200	0.0320	0.0440	0.0560	0.0680	0.0800

(1) The index price represents the agreed upon market price for the particular mineral contained in the lease agreement. The index price is generally a recognized published index such as U.S. Producer Price for copper, Handy & Harmon price for gold and silver, etc.; however, the index price is subject to a floor and a ceiling. The beginning floor or base price represents the price at which the net present value of future cash flows from the property equals zero at an agreed upon discount rate pursuant to the Appraised True Value Method. The ceiling price represents the maximum price actually received by the lessee for the mineral during an agreed upon period of time.

(2) The royalty rate ranges from a low of 2% when the index price is less than or equal to the floor price to 8% when the index price is greater than or equal to the ceiling price.

(3) Factor is necessary to determine the effective royalty rate when the index price falls between the floor and ceiling prices and is calculated as follows:

$$\frac{\text{Maximum royalty rate} - \text{Minimum royalty rate}}{\text{Ceiling price} - \text{Floor price}} = \frac{8\% - 2\%}{\text{CP } 1.50 - \text{FP } .80} = \frac{.0600}{.700} = .0857$$

Read Mitterstaedt, Mgr.

Price Waterhouse

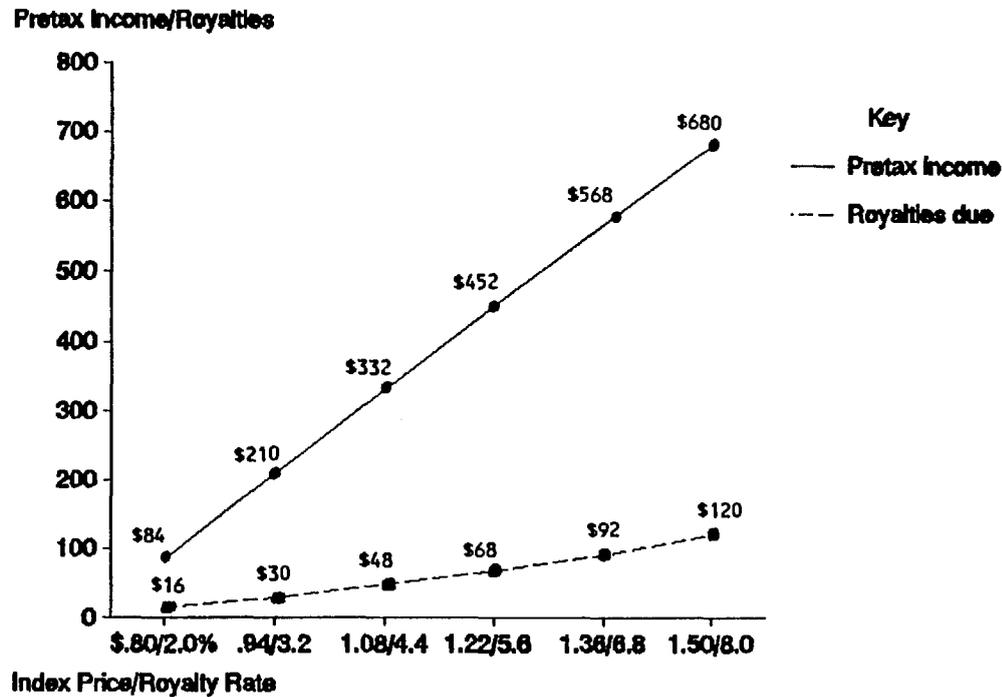


*(Kopys mine)
of particular
interest.*

ABC MINING COMPANY

COMPARISON OF PRETAX INCOME TO ROYALTIES DUE UNDER GROSS REVENUE METHOD

XYZ MINE - YEAR #1



ASSUMPTIONS:

Production 1,000 lbs
Production costs \$.70/lb



ABC Mining Company
Gross Royalty vs Modified Net Smelter Return
XYZ Mine - Year 1

Gross Royalty Method
 =====

	-----Index Price Range-----					
Index Price	(Floor) 0.8000	0.9400	1.0800	1.2200	1.3600	(Ceiling) 1.5000
Production	1,000	1,000	1,000	1,000	1,000	1,000
Gross Value	800	940	1,080	1,220	1,360	1,500
Royalty Rate	0.0200	0.0320	0.0440	0.0560	0.0680	0.0800
Royalty	16	30	48	68	92	120

Modified Net Smelter Return
 =====

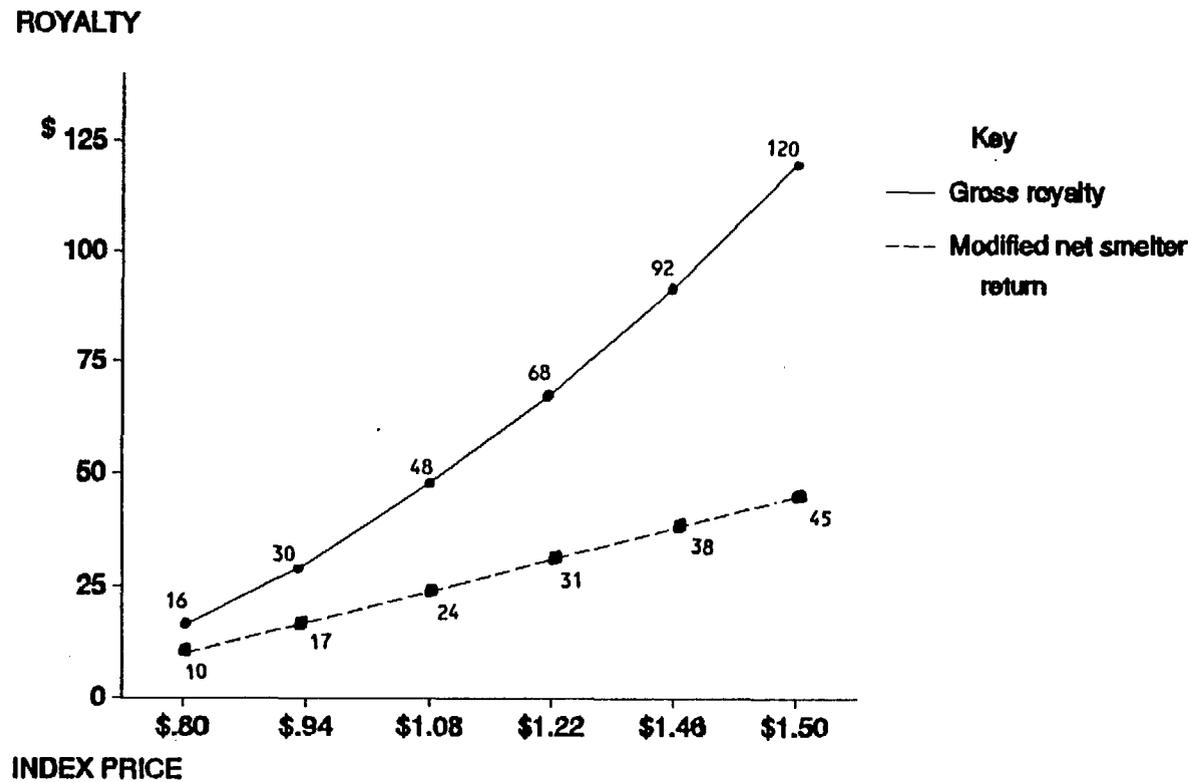
Index Price	0.8000	0.9400	1.0800	1.2200	1.3600	1.5000
Production	1,000	1,000	1,000	1,000	1,000	1,000
Gross Value	800	940	1,080	1,220	1,360	1,500
Less:						
Milling	255	255	255	255	255	255
Smelting	170	170	170	170	170	170
Refining	43	43	43	43	43	43
Overhead	128	128	128	128	128	128
	596	596	596	596	596	596
Net Smelter Return	204	344	484	624	764	904
Royalty Rate	0.05	0.05	0.05	0.05	0.05	0.05
Royalty	10	17	24	31	38	45
Difference	6	13	23	37	54	75



ABC MINING COMPANY

GROSS ROYALTY VS MODIFIED NET SMELTER RETURN

XYZ MINE - YEAR #1



ABC Mining Company
Determination of Index Price Range
Year 2

Year	Average Production Cost Per Unit (1)	
	Old	New
1		0.82
-1	0.79	0.79
-2	0.81	0.81
-3	0.77	0.77
-4	0.75	0.75
-5	0.72	
	3.84	3.94
	5	5
	0.768	0.788

Increase in average unit cost (5 year moving average)	0.02
--	------

	Floor	Ceiling
Index Price Range-Year 1	0.80	1.50
Increase in average unit cost per above	0.02	0.02
Index Price Range-Year 2	0.82	1.52

(1) As reported on Department of Revenue Form 82061-A.



Criteria for Denial of Applications for Issuance of Prospecting Permits and Applications to Renew Mineral Leases A.R.S. §27-251 (B)

- 1) The application was not made in good faith.
- 2) The proposed prospecting or possible future mining activities would not be the highest and best use of the Trust lands.
- 3) The value and income potential of surrounding Trust lands would be adversely affected and the benefit from proposed prospecting and future mining activity cannot reasonably be expected to be greater than the diminished value to those surrounding Trust lands.
- 4) The proposed operations would violate applicable State or Federal law.
- 5) The Commissioner determines that the proposed prospecting activities or possible future mining activities will create a liability to the State greater than the income from the proposed operations.

*Glenn Collins
Deputy Land Comm.*



P.O. Box 509
(602) 297-4330

Cortaro, Arizona 85652
Telex 5106001432

Fax (602) 297-1361

CABSORB-SODIUM
Hydrous Sodium Aluminosilicate
Natural Sodium Chabazite
(Hydrated Type Na Zeolite Powder)

TYPICAL PROPERTIES

Form	Powder
Color	Tan (Dry Brightness 43)
Refractive Index	1.48
Ring Members	8
Crystal Structure	Rhombohedral
Crystal Size	2 - 25 microns
Crystallinity	80 - 95%
Effective Pore Diameter	4.3 Angstroms
Crystal Void Volume (cc/cc)	.47
Packing Density	43 - 45 lbs. 690-720 (kg/m ³)
SiO ₂ /Al ₂ O ₃ Ratio	Approx. 4:1
MOH's Hardness	4-5
Moisture Loss at 800° F	Approx. 18% by weight
pH of 1% Dispersion	10
Stability	pH of 4 through 12
Ion Exchange Capacity	2.37 milliequivalents/g
Ammonia Exchange Capacity	2.06 milliequivalents/g

TYPICAL CHEMICAL ANALYSIS

<u>SiO₂</u>	<u>Al₂O₃</u>	<u>Fe₂O₃</u>	<u>CaO</u>	<u>MgO</u>	<u>Na₂O</u>	<u>K₂O</u>	<u>LOI</u>	<u>Dominant Cation</u>
54.6	14.9	2.28	0.22	0.60	6.67	0.90	19.4	Na

EXCHANGE SELECTIVITIES

Tl⁺>Cs⁺>K⁺>Ag⁺>Rb⁺>NH₄⁺>Pb²⁺>Na⁺=Ba²⁺>Sr²⁺>Ca²⁺>Li⁺

Exchange of Heavy Metal Ions

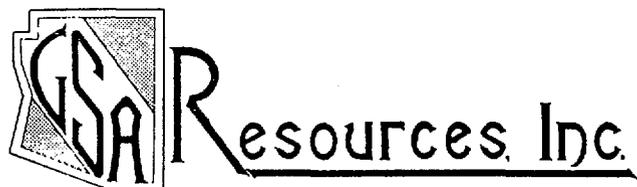
Percent exchanged from 0.01 M. solution

<u>Cu</u>	<u>Zn</u>	<u>Hg</u>	<u>Pb</u>
59	58	3.4	96

Weight Percent of Heavy Metals Retained in
CABSORB After Ion Exchange

<u>Cu</u>	<u>Co</u>	<u>Ag</u>	<u>Pb</u>
3.17	2.82	21.85	15.27

Information herein is accurate to the best of our knowledge. Suggestions are made without warranty or guarantee of results. Before using, user should determine the suitability of the product for his intended use and user assumes the risk and liability in connection therewith.



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MATERIAL SAFETY DATA SHEET - CABSORB SODIUM Chabazite

Date: 10/14/88

Revised: 07\01\91

Supersedes: N.A.

I. PRODUCT IDENTIFICATION

Trade Name: NONE
Chemical Name: Hydrated sodium aluminosilicate mineral
Synonyms: Zeolite, chabazite
CAS Registry No: 1318-02-1
DOT Hazard Class: N.A.
DOT Shipping Name: N.A.

II. PHYSICAL DATA

Appearance and Odor: Dry tan powder, Odorless.
Specific Gravity (liquids only): N.A.
Solubility in Water: Negligible.
Vapor Pressure (mm Hg at ° F, nonaqueous liquids only): N.A.
Evaporation Rate (Butyl acetate = 100, nonaqueous liquids only): N.A.
Solids Content (solutions, dispersions, or pastes only): N.A.
Boiling Point (° F, nonaqueous liquids only): N.A.
pH (aqueous liquids only): N.A.

III. FIRE AND EXPLOSION HAZARD DATA

Flash Point (° F): N.A.
Flammable Limits (vapor in air, Vol. %): N.A.
Fire Extinguishing Media: N.A.
Unusual Fire and Explosion Hazards: None

IV. REACTIVITY DATA

Stability: Stable
Conditions to Avoid: N.A.
Incompatibility (Materials to Avoid): N.A.
Hazardous Decomposition Products: None

MATERIAL SAFETY DATA SHEET - CABSORB SODIUM Chabazite

V. SPILL OR LEAK PROCEDURES

Environmental Hazards: No known adverse effects.

Spillage: Sweep, scoop, or vacuum discharged material.

Waste Disposal Method: Landfill according to local, state, and federal regulations.

VI. HEALTH HAZARD DATA

Eye Contact: May cause irritation.

Skin Contact: May cause irritation.

Inhalation: Causes Irritation.

Ingestion: No hazards known or suspected.

Chronic Hazards: No known chronic hazards. Not listed by OSHA, NTP or IARC as a carcinogen.

VII. SPECIAL PROTECTION INFORMATION

Respiratory Protection: Use NIOSH approved dust mask or respirator where dust occurs.

Gloves: Plastic, rubber or cotton.

Eye Protection: Safety glasses, or chemical goggles.

Other Protective Equipment: N.A.

Personal Hygiene: Avoid breathing dust.

Engineering Control: Use with adequate ventilation.

VIII. SUBSTANCES FOR WHICH STANDARDS HAVE BEEN SET

OSHA Permissible Exposure Limit or ACGIH Threshold Limit: Value have not been established.

Recommended Ceiling Limit: 15 mg/m³ Total dust. 5 mg/m³ Respirable fraction.

Exposure Analysis Methods: Respirable sampler or Midget impinger see: J. Am. Ind. Hyg. Assoc., 28:554 (1967)

IX. ADDITIONAL INFORMATION

Contact: Ted H. Eyde
GSA Resources, Inc.
Box 509
Cortaro, Arizona 85652
Telephone (602) 297-4330
FAX (602) 297-1361



on his agreement and lose the right to mine the deposit. The effect of market conditions on royalty require a knowledgeable lessee and lessor.

Public versus private ownership: Usually, when the government is the lessor, the royalty for a given commodity is less than when the lessor is a private citizen or a profit making organization. This is especially true for industrial minerals. The bulk (more than 90%) of government royalty income comes from oil and gas leases, which have the common one-eighth royalty.

Often the state or federal government does not have the staff to assess the value of each deposit and a variety of commodities that may be under their dominion. Often, the government will develop a flat royalty rate (often a percentage of the average selling price or net smelter return) for various commodities. This approach ignores the factors just described that effect variations in royalty rate.

Royalty data

The table shows the range of royalties and the variations in the basis of computing the fees. In a few instances, it gives the cost of acquired reserves based on purchase price and quantitative estimates of the material in place.

The table lists the commodity in column one. The subsequent columns give the location by state, US geographic area, Canadian province or country. The cost—R for royalty and P for purchased cost—and the year in which the lease or

purchase agreement occurred are given in the third and fourth columns. The last column offers comments or gives a footnote number for more information.

The cost column requires more explanation. The units may refer to cubic yards (/cu yd), cubic feet (/cu ft), tons (/st, 2000 lbs) or acres (/acre).

$$1 \text{ cu yd} = 0.7646 \text{ m}^3,$$

$$1 \text{ cu ft} = 0.2832 \text{ m}^3,$$

$$1 \text{ st} = 0.9078 \text{ t},$$

$$1 \text{ acre} = 0.4047 \text{ hm}^2$$

In several cases, the royalty is a percentage of the sales price of the finished product and is levied against either the amount produced or the amount sold.

The column requires new information each year and it comes from people who have knowledge of royalty rates. If you have any information, please call or write at the address given in the author's box or call 313-462-0005.

Identify the commodity or commodities, the royalty rate(s) in dollars or %, the year the lease was written, the location of the operation(s) by state and any special conditions of the lease. State if you would like to be listed among the contributors or if you want to remain anonymous.

Thanks to all of those who have contributed information and articles and specifically to: Severn Brown, Bob Ganis, Pierre Lassonde, Gary Bendell, Linda Lou and Elton Geist.

Notes for royalty data

1. High royalty for LA market.
2. Royalties on state lands.
3. Variation depends on haul distance

to Denver market.

4. Adjacent to Ohio River and barge transportation.

5. Price for purchased reserves based on estimated tons.

6. High royalty for Houston reflects material scarcity.

7. Purchased reserves adjacent to existing operation.

8. Royalties received by federal government. In some instances, the data reflect total income divided by number of tons.

9. Canadian royalties vary. Seek data from government.

10. Rural area, not close to major market.

11. Limestone-dolomite, % calculated on tons sold.

12. In-place royalty value.

13. Royalty for limestone to be mined underground.

14. Royalty % of sales price, f.o.b. the railhead.

15. Average % royalty on price of finished product, f.o.b.

16. Estimated cost per ton based on volume of deposit and purchase price.

17. Surface mined coal.

18. Coal mined underground.

19. Price paid for reserves at existing operation.

20. Purchase rights to extract.

21. Small acreage fee is advanced royalty or sign-up fee.

22. Percent of net operating income on Indian lands.

23. Placer recovery. Proposed to be paid on gross sales.

24. Paid on net operating profit. ♦

Location	Costs	Year	Comments	Notes
			Sand and Gravel	
AZ	\$0.74/t	1980		
AZ	\$0.08-0.15/t R	1980		
AZ	\$0.55/t R	1986	12% Indian land	
AZ	\$0.78/t R	1987	Bid for State land	
AZ	\$0.52/t R	1988	Revenue-production	3
CA	\$0.25/t R	1974	Metro market	1
CA	5% R	1981	job plant	
CA	\$0.43/t R	1986	12.5% Indian land	
CA	\$0.52/t R	1990		
CA	\$0.65/t R	1989	Revenue-production	8
CA	\$0.75/t R	1990		
CO	\$0.35/t R	1982	State land	2
CO	\$0.25-1/t R	1986		3
FL	\$0.60/t R	1987		
ID	\$0.50/t R	1975	State land	
ID	\$0.32/t R	1990		
IN	\$0.17/t R	1978		
KY	\$0.15/t R	1978	On Ohio River	4
LA	\$0.80/yd R	1985	River sand	
LA	\$0.75/t R	1986	New Orleans	
LA	\$0.60/yd R	1987	Pearl River	
LA	\$0.35/t R	1987	Mason Sand	
MI	\$0.30-0.50/t R	1981	Washed materials	
MI	\$0.03-0.10/t P	1981	Price for estimated tons	5
MI	\$0.02/t P	1984	Purchased by road commission	
MI	5% R	1985	ASP state land	2
MI	\$0.40/t R	1987	\$10,000 annual minimum	

Location	Costs	Year	Comments	Notes
MI	\$0.50/t R	1987	Fill sand	
MI	\$0.50/yd R	1988	Fill sand	
MI	\$0.25/yd R	1988	Sand — above water	
MI	\$0.15/yd R	1988	Sand — below water	
MN	\$0.45/t R	1985	USFS Land	
MS	\$0.50-0.60/yd R	1987		
NV	6% R	1986	Federal land	
NV	\$0.35/t R	1986	9.6% Indian land	
NV	\$0.30/t R	1989	Revenue-production	8
NJ	\$0.15-0.25/t R	1982		
NM	\$0.62/t R	1989	Revenue-production	8
NY	10% R	1982	Varies 4%-10% maximum	
NY	\$0.18-0.30/t R	1983		
OK	\$0.12/t R	1986	8% Indian land	
PA	\$0.30/t R	1983		
TX	\$0.65/t R	1978	Metro market	6
TX	\$0.50-1/yd R	1984	Metro areas	
UT	\$0.30/yd R	1988	State land	
VA	\$0.17/t P	1983		
UA	\$0.75-0.90/t R	1982		
WA	\$0.91/t R	1986	12.5% Indian land	
WA	\$0.52/t R	1989	Revenue-production	8
Midwest	\$0.05/t R	1946	Old lease	
Midwest	\$0.10/t P	1979	Purchased adj to operation	7
NEast	\$0.30/t R	1982		
Offshore	\$0.50/yd R	1988	Proposed Federal lease	
Federal	\$0.15-.25/yd P	1984	Purchased in place	

Location	Costs	Year	Comments	Notes
Federal	\$0.37/t R	1985	Revenue/production	8
Crushed Stone Used for Aggregate				
AL	\$0.10-0.20/t R	1986	Limestone	
AL	5% R	1986	ASP Granite	
CO	\$0.35/t R	1982	Stato land	2
GA	\$0.15-0.20/t R	1986	Limestone	
IN	\$0.05-0.15/t R	1977	Federal land	8
IN	5% R	1981	f.o.b. plant	11
IN	\$0.20/t R	1985	Limestone rural	
IN	5.5% R	1985	Limestone	
KY	3.5% R	1971	ASP Limestone	
KY	\$0.04/t R	1974	Limestone	
MI	5% R	1985	ASP	2
MI	\$0.55/t R	1987	Near metro market	
MI	\$0.60/t R	1969	Dolomite RR ballast	
MI	\$0.30-0.65/t R	1985	Byproduct gangue	
MI	\$0.50/t R	1987	Granite waste	
MI	\$0.80/t R	1985	Includes blasting svc	
MO	\$0.10/t R	1971	Limestone	
MO	\$0.05/rd R	1977	Plus 2.5% net sales	
MO	\$0.05-0.25/t R	1978		
NV	\$0.40/t R	1982	For lightweight material	
NJ	\$0.40/t R	1982	Crushed limestone	
NM	\$0.60/t R	1983		
NC	\$0.25/t R	1979	Crushed granite	
NC	\$0.10-0.25/t R	1986	Limestone	
NC	3.5%-5% R	1986	ASP limestone-granite	
NC	4.5% R	1991	f.o.b. gross sales	
OK/AR	\$0.10-0.15/t R	1985	Rural	
PA	\$0.15-0.20/t R	1980	Limestone	
TN	\$0.08-0.10/t R	1986	Limestone	
UT	\$0.30/t R	1990	Chat from hi-cal	
VA	5% R	1986	Federal land	
VA	\$5000/a P	1988	Land purchase price	
WV	\$0.15/t R	1980	Limestone	
Midwest	\$0.50/t R	1972	Metro market	
Midwest	7.5%-15% R	1980	f.o.b. plant	10
NEast	4%-5% R	1982	Metro area	
SCentral	3%-3.5% R	1985		
Can-BC	\$0.25/rd R	1974		
Can-MB	\$0.15/t R	1973		
Can-NB	\$0.10/t R	1968		
Can-ON	\$0.15/rd R	1971		
Other Stone				
AZ	\$0.25/t R	1957	High-calcium limestone	
AZ	\$0.40/t R	1986	Cement limestone	
CA	\$0.65/t R	1983	Limestone for sugar	
CA	\$0.06/t P	1988	Purchased in-place	
CO	\$0.50/t R	1981	High-calcium limestone	
GA	5% R	1975	Cement limestone	
ID	\$2.50/t R	1975	Dimension Stone	
IN	\$0.18/t R	1975	Chem-grade limestone	
IN	\$0.10/t R	1978	High-calcium limestone	
KY	\$0.10/t R	1978	Limestone underground	13
KY	\$0.16/t P	1986	Bought mine & plant	
MI	5% R	1985	Clay-shale	2
NJ	\$0.40/t R	1982	Whiting limestone	
SC	\$0.31/t R	1991	Cement rock	
TN	\$0.13/t P	1978	Chem-grade limestone	
UT	\$0.24/t R	1983	Cement limestone	
UT	\$0.60/t R	1990	Hi-calcium limestone	
VA	\$0.15-0.25/t R	?	Hi-calcium limestone	
VA	\$0.07/t R	1988	\$1200/month minimum	
Midwest	\$0.10/cu ft R	1972	Dimension stone	12
Midwest	\$0.15/cu ft R	1982	Dimension stone	12
Midwest	\$0.40/t R	1984	High-calcium limestone	
SEast	\$1/cu ft R	1980	Dimension stone	
SEast	7.5% R	1986	ASP granitic dimension stone	
Can-BC	\$1/rd R	1974	Marble	
Can-MB	\$0.50/t R	1973	Dimension stone	
Industrial Sand				
AZ	\$1/t R	1982	State land	2
MI	7% R	1985	Industrial sand	2
MI	5% R	1985	Sandstone	2
MI	\$0.10/t R	1987	\$10,000 annual minimum	
NV	10% R	1955	Federal land	
SC	\$0.60-1.15/rd R	1970		
NWest	\$0.40/t R	1986	Silica for glass	
Scotland	\$0.36/t R	1987	Glass sand	
Amethyst				
GA	\$2/gm R	1989	Revenue-production	8

Location	Costs	Year	Comments	Note
Barite				
AR	4% R	1964	Federal land	
MO	\$0.70-1/t R	1980	On washed material	
NV	\$4/t R	1980		
Bentonite				
AZ	5% R	1980	State land	2, 14
AZ	\$3/t P	1981		
WY	\$0.40/t R	1958	Federal land	
WY	\$0.74/t R	1979	Inflation clause	
WY	\$1.55/t R	1982	Fixed contract	
WY	\$1.10/t R	1985	Inflation clause	
West	\$1.50/t R	1984	Hectorite f.o.b. plant	
Clay				
AL	\$0.08/t R	1970	Federal land	
MI	\$0.15-.30/rd R	1986	For landfill liner	
MI	5% R	1988	ASP for cement	
PA	\$1/t R	1989	For landfill liner	
MO	\$0.15/t R	1967	Federal land	
NV	\$0.11/rd R	1986	For landfill liner	
OK	\$2/t R	1987	\$10,000/yr minimum	
WI	0.33/cu yd R	1986	For landfill liner	
Diatomite				
West	3.5% R	1981	On finished product	15
NV	\$1/t R	1985		
Feldspar				
GA	\$0.30/t R	1964	Surface mine	
GA	\$0.16/t R	1964	Underground	
Fire Clay				
ID	\$0.50/t R	1986	State land	
Fluorspar				
IL	5% R	1944	Federal land	
IL	5% R	1982	Federal land	
IL	\$8.34/t R	1986	Federal land	
Fuller's Earth				
GA	\$0.40/t R	1986		
VA	\$0.50/t R	1985		
Garnet				
ID	7% R	1966	Federal land	
ID	12.5% R	1986	Federal land	
ID	\$12.50/t R	1983		
ME	4% R	1987	NSP, \$10,000 annual minimum	
Gem Stones				
ID	10% R	1975	% gross, State land	
Gilsonite				
UT	12.5% R	1963	Federal land	
UT	12.5% R	1986	Federal land	
Gypsum				
AZ/CA	\$0.30/t R	1986		
IN	\$300-600/a P	1981	Underground reserves	
MI	5% R	1985		
2				
NM	\$0.55/rd R	1984	Plus \$100/a	2
NM	\$0.20/t R	1984	Reserves value	
NM	\$0.30/t R	1984	Reserves value	
NM	\$0.64/t R	1986	5% Indian land	
NM	\$0.56/t R	1989	Indian land	
Heavy Minerals				
SEast	5% R	1986		
Kaolin				
GA	\$0.10/t R	1925	Plus \$1 per acre	
GA	\$0.33/rd R	1957		
GA	\$1-1.75/rd R	1980	on calculated cu yd	
GA	\$0.50/t R	1983		
GA	\$0.30-0.50 t R	1986		
SC	\$0.30/t R	1967		
SEast	\$3.00/rd R	1985	High quality	
Mica				
SEast	\$0.35/t R	1986		
Olivine				
NC	5%	1985	Federal land	

Location	Costs	Year	Comments	Notes
Perlite				
West	4% R	1980	% of finished product	15
Phosphate				
CA	5% R	1969	Federal land	
FL	5% R	1951	Federal land	
FL	\$0.83/t R	1986	Revenue-production	8
ID	\$0.64/t R	1986	Revenue-production	8
ID	\$1.29/t R	1986	12.3% Indian land	
ID	\$0.81/t R	1990	State land	
MT	\$0.80/t R	1989	Revenue-production	
UT	5% R	1937	Federal land	
WY	5% R	1964	Federal land	
SEast	\$1.01/t P	1980	Paid for estimated reserves	16
Potash				
CA	5% R	1924	Federal land	
CA	5% R	1986	Federal land	
NM	2.5%	1986	Federal land	
NM	\$1.66/t R	1989	Revenue-production	8
UT	2% R	1963	Federal land	
UT	3% R	1986	Federal land	
UT	\$2.42/t R	1989	Revenue-production	8
Quartz Crystal				
AR	5% R	1987	Federal land	
AR	\$0.42/lb R	1989	Revenue/production	8
Refractory Clays				
MO	\$0.10-0.20/t R	1976	Plastic clay	
MO	\$1-2/t R	1977	Burley clay	
MO	\$0.25-0.30/t R	1978	Flint clay	
Salt				
MI	4% R	1985	Solution mined	2
MI	2% R	1985	Room & pillar	2
Scoria				
AZ	\$0.59/t R	1986	10% Indian land	
Sodium				
CA	5% R	1986	10% Indian land	
NV	5% R	1982	10% Indian land	
NM	5% R	1982	10% Indian land	
UT	3% R	1986	10% Indian land	
WY	5% R	1947	10% Indian land	
Sulfur				
AL	\$8.82/t R	1989	Revenue-production	8
MT	12.5% R	1986	Federal land	
MT	\$2.38/t R	1989	Revenue-production	8
NM	12.5% R	1986		
NM	\$2.50/t R	1989	Revenue-production	8
ND	9.7% R	1986		
ND	\$3.80/t R	1989	Revenue-production	8
WY	6.7% R	1986		
WY	\$1.87/t R	1989	Revenue-production	8
Sylvite				
NM	2.5% R	1986	Revenue-production	
Talc				
MT	\$2.50/t R	1982	or 2% f.o.b.	
TX	\$3.25/t R	1984	Closed	
Topsoil				
MI	\$0.30-.40/yd R	1986		
Trona				
WY	\$7.02/t R	1986	Federal land	
WY	\$245/a R	1986	Federal leases	
WY	\$316/a R	1986	Federal leases	
Tripoli				
AR	\$1.17/t R	1984		
IL	\$0.30-0.50/t R	1985	USFS land	
Volcanic Cinder				
AZ	\$0.30-0.50/t R	1988		
Wavelite				
AR	6% R	1968	Federal land	
Zeolite				
AZ	\$11.90/t R	1984	State land	2

Location	Costs	Year	Comments	Notes
ID	\$4.50/t R	1986	Per ton recovered	
Coal				
AL	8% R	1986	Strip mine	
AL	5%-6% R	1986	Underground	
AL	\$3/t R	1986	Proposed lease	
CA	\$0.15/t R	1943	Federal land	
CO	\$0.15/t R	1934	Federal land	
CO	\$0.10/t R	1951	Federal land	
ID	8%	1975	Open Pit	
ID	12.5%	1975	Underground	
IL	\$0.62/t P	1978	Mine for sale	
IN	1-2/t R	1982	Strip mine	17
IN	3.5%-5% R	1980	Underground	18
KS	5% R	1983		
KY	4% R	1965	ASP - underground	
KY	4% R	1981	Underground	18
KY	\$1.66/t P	1981	Existing mine	19
KY	\$1.50/t R	1982	Underground	18
KY	0.26/t P	1984	In-place value	
KY	6%-10% R	1985	ASP Strip mine	
MI	7% R	1985		2
PA	\$0.50/t R	1981	Rights to extract	20
PA/WV	\$0.94/t P	1981	Bought three mines	
VA	\$0.80/t P	1986	Bought mine	
WV	4%-5% R	1978	Plus \$/t for rights	
WV	\$1.50/t R	1979		
WV	\$0.75/t P	1981	Bought mine	19
South	\$0.18/t P	?		
Federal	12.5% R	1980	Strip mine	8, 17
Federal	8% R	1980	Underground	8, 18
Oil Shale				
IN	\$10/a R	1981	Adv royalty, plus 750/a mined	21
IN	\$10/a R	1981	Adv royalty plus 5% tons extracted	21
Uranium				
NM	9.9% R	1986	Indian land	
WY	6.25% R	1986	Federal land	
Federal	15% R	1981	Indian land	8, 22
Base and Precious Metals				
MN	4%-5% R	1987	NSR Private land	
MN	3.5% R	1987	State land	
WI	2%-5% R	1987	NSR	
Copper				
MN	4.5% R	1966	Federal land	
MO	\$22.91/t R	1989	Revenue-production	8
Federal	\$14.94/t R	1985	Revenue-production	
Gold				
SEast	12.5% R	1980	Proposed lease	23
NV	8% R	1981	On net profit	24
NV	10%-12% R	1990	Net smelter return	
Iron				
MI	\$2/t R	1980		
MN	\$0.80/t R	1985		
MN	4% R	1986	Federal land	
MN	\$0.96/t R	1989	Revenue-production	8
Lead				
MO	5% R	1958	Federal land	
MO	\$14.78/t R	1989	Revenue/production	8
Lead-Zinc				
MO	5% R	1981	Net smelter return	
Magnesium				
UT	\$0.34/t R	1989	Revenue-production	8
Molybdenum				
CO	6% R	1983	NSR	
Precious Metals				
MT	5% R	1987	NSR open pit	
MT	4% R	1987	NSR underground	
Zinc				
IL	5.7% R	1986	Federal land	
MO	\$28.41/t R	1989	Revenue-production	8



Attorney General

1075 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

June 26, 1990

M. J. Hassell, Commissioner
State Land Department
1616 West Adams
Phoenix, Arizona 85007

Re: 190-052 (R90-011)

Dear Commissioner Hassell:

You have requested an opinion on several questions pertaining to the confidentiality of records used in conducting mine appraisals pursuant to A.R.S. § 27-234. First, you asked whether appraisal reports containing confidential information are restricted to review by State Land Department personnel and, if so, whether the entire report is confidential in perpetuity. Second, you asked whether the State Land Commissioner can make public his or her final appraisal decisions. Finally, you inquired whether the members of the Board of Appeals are permitted to review the appraisal on appeal. We conclude that when information made confidential by A.R.S. § 42-108 is included in an appraisal report, the confidential portions of the report may not be released to the public. The State Land Commissioner's appraisal decision regarding the value of the leasehold interest may be made public except for any sections containing information made confidential pursuant to A.R.S. §§ 27-234 and 42-108. Finally, we conclude that the Board of Appeals may review the appraisal reports when an appraisal decision is appealed.

The basis for your request is A.R.S. §§ 27-234(F),(G) and (H), which provide:

F. The department shall review all state and county property tax assessment information relevant to the mineral lease. The department shall maintain that information on a confidential basis as prescribed by A.R.S. §42-108.

Kate Mead
Assist. Attorney General

G. Every mineral lease in state shall require the lessee to make the following records available on an annual basis:

1. Itemized statements of mineral production
2. Relevant tax records
3. Additional relevant records pertinent to appraisal, compliance with the lease and mineral production deemed necessary by the commissioner

H. The information obtained under subsection G, paragraph 2 of this section and any trade secrets, as defined in § 23-401, are confidential.

The statutory section referred to in subsection F, A.R.S. § 42-108, provides that confidential tax information may not be disclosed except under several limited exceptions that are not applicable here. A.R.S. § 42-108(D)(1)(2).

A.R.S. § 27-234 extends the confidentiality requirements of A.R.S. § 42-108 to the state and county property tax information reviewed by the State Land Department during the mine appraisal process. The confidentiality requirement stands in juxtaposition to the general rules applied to public records.^{1/}

Generally, all records required to be made, maintained and preserved by public records statutes are available for inspection. A.R.S. § 39-121; Carlson v. Pima County, 141 Ariz. 487, 687 P.2d 1242 (1984). However, the public's right to inspect public records is subject to the qualification that information contained in the records is treated as confidential when a statute specifically declares the information to be confidential or where material in the record is such that disclosure would be against the state's best interests. Id.; Berry v. State, 145 Ariz. 12, 699 P.2d 387 (App. 1985). When confidential information is included in an appraisal report, the disclosure of such information is restricted pursuant to

^{1/} A.R.S. § 39-121 provides: Public records and other matters in the office of any officer at all times during business hours shall be open to inspection by any person.

A.R.S. § 27-234 and 42-108. Yet, only the confidential portions of an appraisal report are exempted from the general public records disclosure requirements of A.R.S. § 39-101. Confidential portions of the report should be redacted and the remainder of the report released for public inspection. Carlson v. Pima County, 141 Ariz. 487, 687 P.2d 1242 (1984); Arizona Att'y Gen. Op. 175-781. Information that is by statute confidential remains confidential until the legislature provides otherwise. Berry v. Department of Corrections.

The State Land Commissioner's appraisal decision itself is not subject to the confidentiality requirements of A.R.S. § 27-234(H) except to the extent that it contains confidential information pursuant to § 42-108. The appraisal decision is a public record and should be released for public review after any confidential information has been redacted. The release of the appraisal decision is subject to the Commissioner's discretion to deny or restrict access when the best interests of the State in carrying out its legitimate activities outweigh the general policy of open access. See Carlson v. Pima County, 141 Ariz. 487, 687 P.2d 1242 (1984).

In order to conduct an effective appeal of the Commissioner's appraisal decision pursuant to A.R.S. § 27-234(J),^{2/} the Board of Appeals must be able to review all appraisal documents. The statutory remedy of appeal to the Board mandates review by the Board of the appraisals that culminated in the Commissioner's appraisal decision. However, the Board's review of the appraisal reports containing

^{2/} A.R.S. § 27-234(J) provides:

Appeals of the appraisal decision of the commissioner may be taken pursuant to § 37-215 to the Board of Appeals, established by § 37-213, which shall affirm, modify or reverse the decision of the commissioner within one hundred eighty days. Decisions of the board of appeals under this subsection are subject to judicial review pursuant to title 12, chapter 7, article 6. As a condition of the appeal, the lessee must continue to make all rental and royalty payments due based on the commissioner's final appraisal decision, and the court shall not stay the commissioner's decision, in whole or in part, pending a final disposition of the case. The state treasurer shall segregate rents and royalties paid while an appeal is pending and shall not distribute such monies to the state general fund or to the trust beneficiaries until the appeal is completed.

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confidential information, or otherwise, the Board shall not be required to disclose such information in a public session. A.R.S. § 38-421.03(A)(2) provides that when it is necessary for the Board to discuss confidential information, the Board must retire to executive session as provided by A.R.S. § 38-421.03(A)(2) to consider those matters that are confidential by law.

Sincerely,



BOB CORBIN
Attorney General

BC:KLM:jaf

OCCUPATIONAL SAFETY AND HEALTH
Ch. 2

§ 23-401

Repeated Sections	New Sections	Repeated Sections	New Sections
23-407	23-421	23-409	None
	23-422	23-410	23-410
	23-423		23-430
23-408	23-408	23-411	None
	23-426		

Law Review Commentaries

Civil procedure, Arizona appellate decisions. 18 Ariz.L.Rev. 617 (1976).

Non-profit profiteering, regulating religious cult employment practices. 23 Ariz.L.Rev. 1003 (1981).

Library References

Labor Relations §§ 9.5 et seq., 27 et seq.
C.J.S. Labor Relations §§ 2, 16.

§ 23-401. Definitions

In this article, unless the context otherwise requires:

1. "Board" means a review board established pursuant to § 23-422.
2. "Commission" means the industrial commission of Arizona.
3. "De minimis violation" means a condition or practice which, although undesirable, has no direct or immediate relationship to safety or health.
4. "Director" means the director of the division.
5. "Division" means the division of occupational safety and health within the commission.
6. "Employee" means any person performing services for an employer except employees engaged in household domestic labor.
7. "Employer" means any individual or type of organization, including the state and all its political subdivisions, which has in its employ one or more individuals performing services for it in employment and includes self-employed persons, but does not include employers of household domestic labor.
8. "Interested party" means the commission and its agents, the employer and the affected employees of such employer.

9. "Non-serious violation" means a condition or practice in a place of employment which does not constitute a serious violation but which violates a standard or regulation and has a direct or immediate relationship to safety or health, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of such condition or practice.

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§ 23-401

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10. "Recognized hazard" means an unsafe or unhealthful condition or practice recognized as such with respect to the standard of knowledge in the industry.

11. "Regulation" means any written regulation of occupational safety and health governing places of employment formulated pursuant to § 23-410, exclusive of standards, and shall have the same meaning as and include the term "rule".

12. "Serious violation" means a condition or practice in a place of employment which violates a standard, regulation or § 23-403, subsection A and produces a substantial probability that death or serious physical harm could result, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of such condition or practice.

13. "Standard" means any occupational safety and health standard which has been adopted and promulgated by a nationally recognized standards-producing organization or the federal government and shall have the same meaning as, and include the term "code".

14. "Trade secret" means a plan or process, tool, mechanism, or compound not patented, known only to its owner and those of his employees to whom it is necessary to confide it.

15. "Workplace" means a location or site wherein work, either temporary or permanent, is being conducted in connection with an industry, trade or business.

Added by Laws 1972, Ch. 136, § 3. Amended by Laws 1974, Ch. 82, § 1; Laws 1977, Ch. 151, § 1.

Historical Note

Source:

Laws 1968, 4th S.S., Ch. 6, § 10.

A.R.S. former § 23-401.

Laws 1971, Ch. 173, § 2.

Former § 23-401, derived from Laws 1968, 4th S.S., Ch. 6, § 10; and Laws 1971, Ch. 173, § 2, and relating to definitions, was repealed by Laws 1972, Ch. 136, § 2.

Laws 1972, Ch. 136, § 1 provides:

"The legislature declares it to be its purpose and policy to assure so far as possible every working man, woman and child in the state safe and healthful working conditions and to preserve our human resources."

Laws 1972, Ch. 136, § 4 provides:

"No action brought pursuant to previous statutory authority shall be invalidated by the taking effect of this article, provided

that such action was initiated prior to the effective date of this article."

For new sections covering the subject matter of former §§ 23-401 to 23-411, repealed by Laws 1972, Ch. 136, § 2, see Disposition Table preceding this section.

The 1974 amendment substituted "performing services" for "in receipt of or entitled to compensation for labor performed" in par. 5 (now par. 6); substituted "term" for "words 'code' and" in par. 6 (now par. 11); added "and shall have the same meaning as, and include the term 'code'" in par. 7 (now par. 13); deleted pars. 10 and 11, which had read:

"10. 'Hazard' means a condition or practice in a place of employment which violates a standard or regulation and produces a reasonable probability that physical harm or death could result.

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Ch. 2

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MINERALS; EXPLORATION PERMITS; LEASES

§ 27-252

Ch. 2

following "exploration permit is in" in the first sentence of subsec. C.

1986 Reviser's Note:

The 1990 amendment substituted "as prescribed by § 37-108" for "of twenty-five dollars" in the third sentence of subsec. A.

In the section heading "mineral exploration" was substituted for "prospecting" pursuant to authority of § 41-1304.02.

Library References

Mines and Minerals ¶6.
WESTLAW Topic No. 260.
C.J.S. Mines and Minerals §§ 128 to 130.

Notes of Decisions

Entry onto premises 3
Equal access to permits 1
Renewal of permits 2

1. Equal access to permits

Fact that corporation, to which certain applicants for mineral exploration permits on state land owed no obligation, provided information, financial assistance, and legal aid to such friendly applicants with expectation that some if not all permits obtained by those applicants would be assigned to corporation was a violation of legislative intent of affording equal chance at success to each applicant for permit, and, thus, applications of such applicants were void. *Haggard v. State ex rel. Bettwy* (App. 1978) 120 Ariz. 480, 586 P.2d 1292.

2. Renewal of permits

Fact that holders of mineral exploration permits on state land had allowed permits to ex-

pire did not prohibit such holders from filing applications for new permits on same land, though such conduct circumvented this section and §§ 27-252 and 27-253 permitting only four successive annual renewals of permits. *Haggard v. State ex rel. Bettwy* (App. 1978) 120 Ariz. 480, 586 P.2d 1292.

Mineral exploration permit holder could not, prior to expiration of final periods of permit, relinquish and surrender the permit, or any incremental portion thereof, and immediately thereafter file an application for, and receive, a new mineral exploration permit covering the same land. *Op. Atty. Gen. No. 68-25-L.*

3. Entry onto premises

Any bad faith entry of state mineral lessee would not render lease issued void, and application for prospecting permit filed with respect to leased land must be denied. *Smith v. Lassen* (1967) 5 Ariz. App. 60, 423 P.2d 136, rehearing 5 Ariz. App. 208, 424 P.2d 856.

§ 27-252. Terms of mineral exploration permit

A. Every mineral exploration permit shall be for a term of one year from the date of issuance, subject to renewals as provided in this article for an aggregate of not to exceed five years from such date, and shall give to the permittee the rights, subject to the terms and conditions, as follows:

1. During the period the permit is in force and effect, the permittee shall have the exclusive right to explore for minerals within the state land covered by the permit, and to apply for and obtain a mineral lease or leases to the land.

2. The permittee shall have those surface rights necessary for the prospecting and exploration for mineral on the state land covered by the permit, but may remove from the land only that amount of mineral required by the permittee for sampling, assay and metallurgical testing purposes.

3. The permittee shall have the right of ingress to and egress from the land covered by the permit across other state lands but only along routes first approved by the commissioner.

4. The permittee shall be liable to and shall compensate the owner and lessee of the surface of the state land covered by the permit, or across which the permittee exercises the right of ingress and egress, for any loss to such owner and lessee from damage or destruction caused by the permittee, his or its agents or employees, to grasses, forage, crops or improvements upon such state land.

5. The permit shall terminate automatically as of the end of any annual period from and after the date of issuance thereof unless during such annual period the permittee shall have expended in exploration for valuable mineral deposits on the state land covered by the permit not less than the amount per acre provided in this article or paid to the department a sum equal thereto, and prior to expiration of such annual period shall have filed with the department an application for renewal for the ensuing annual period, and an affidavit showing such expenditure, together with such other proof in support thereof as the commissioner by regulation may prescribe. The amount to be so expended or paid to the department during each of the first two annual periods in which such permit may be in effect shall be not less than ten dollars for each acre of state land covered by the permit at the commencement of such annual period, and the amount to be so expended or paid to the department during each of the last three annual periods in which such permit may be in effect shall be not less than twenty dollars for each acre of state land covered by the permit at the commencement of such annual period. Prior to termination of any such annual period, the permittee may, by instrument in writing filed with the department, release from the permit the acreage covered thereby and contained within one or more rectangular subdivisions of twenty acres, more or less, or lots, according to the lines of the public land surveys.

6. When a permittee has an interest in one or more contiguous properties for which he or she holds a mineral exploration permit, such permittee may group such permits and expend the sum required by this article under a common plan of development on one or more of the properties for the benefit of all if the total area of such contiguous property shall not exceed three miles on a side.

7. Upon termination of the mineral exploration permit, other than by issuance of a mineral lease, the permittee shall submit to the department the following information, which shall not include any chemical analysis or other identification of minerals, concerning any drill holes or wells drilled on state land covered by the permit:

- ✓ (a) Total depth.
- ✓ (b) Lithologies and depths of lithologic boundaries encountered in the hole.
- (c) Logs of surveys made of the hole including gamma ray, resistivity, caliper and deviation surveys.

8. Drill hole information shall be confidential for one year after termination of the permit and such period of confidentiality shall be extended for an additional year upon the request of the permittee.

9. Any excess of the permit may be for periods of

10. In lieu of making an exploration.

B. Upon expiration of the permit, the permittee shall fill any holes and shall file with the commissioner a report of the former conditions.

C. As used in this article, "exploration" means any work conducted upon the land to determine the existence of minerals, but is not limited to geophysical surveys, test holes, assay and analysis. Added by Laws 1975, Chapter 100, Section 1, subsection A, the words "and 'or' in the word 'and'" and "or" in the word "and" are deleted.

Laws 1975, Chapter 100, Section 1, subsection A, the words "and 'or' in the word 'and'" and "or" in the word "and" are deleted.

Mines and Minerals
WESTLAW
C.J.S. Mines and Minerals

Annual exploration permit
Renewal of permit

1. Renewal of permit

Fact that holder of permit on state land did not produce applications for renewal, though such conditions are stated in §§ 27-251 and 27-252, is not sufficient to require the state to issue a new permit. Haggard v. State, 1975, 120 Ariz. 480, 586 P.2d 1000.

Mineral exploration permit. Upon expiration of the permit, the permittee shall fill any holes and shall file with the commissioner a report of the former conditions.

9. Any expenditures in exploration for valuable mineral deposits made in excess of the requirements of this article during any annual period of the permit may be credited against expenditure requirements of successive annual periods of the permit.

10. In lieu of making expenditures in exploration, the permittee may elect to make a money payment of the amounts required for expenditures in exploration for valuable mineral deposits to the department.

B. Upon any partial or total relinquishment, or the cancellation or expiration of the permit other than by issuance of mineral lease, the permittee shall fill any holes, ditches or other excavations, as may be required by the commissioner and so far as reasonably possible, restore the surface to its former condition.

C. As used in this article, the term "exploration" shall mean activity conducted upon the state land covered by an exploration permit to determine the existence or nonexistence of a valuable mineral deposit, including but not limited to geological, geochemical or geophysical surveys conducted by qualified experts, and drilling, sampling and excavation, together with the costs of assay and metallurgical testing of samples from such land.

Added by Laws 1961, Ch. 24, § 1. Amended by Laws 1975, Ch. 84, § 1.

Historical and Statutory Notes

Laws 1975, Ch. 84, § 1, inserted in par. 5 of subsec. A the words "or paid to the department" and "or paid to the department a sum equal thereto" where those words appear, added pars. 6 to 10 to subsec. A, and added subsecs. B and C.

Library References

Mines and Minerals ¶6.
WESTLAW Topic No. 260.
C.J.S. Mines and Minerals §§ 128 to 130.

Notes of Decisions

Annual exploration expenditures 2
Renewal of permits 1

new mineral exploration permit covering the same land. Op.Atty.Gen. No. 68-25-L.

1. Renewal of permits

Fact that holders of mineral exploration permits on state land had allowed permits to expire did not prohibit such holders from filing applications for new permits on same land, though such conduct circumvented this section and §§ 27-251 and 27-253 permitting only four successive annual renewals of permits. *Haggard v. State ex rel. Bettwy* (App.1978) 120 Ariz. 480, 586 P.2d 1292.

Mineral exploration permit holder could not, prior to expiration of final periods of permit, relinquish and surrender the permit, or any incremental portion thereof, and immediately thereafter file an application for, and receive, a

2. Annual exploration expenditures

Provision of this section requiring holder of prospecting permit to expend a certain amount each year for exploration for valuable mineral deposits for each permit for exploration for mineral deposits on state land does not expressly prohibit allocation of drilling expenditures to more than one permit if drilling is done on a common line, but State Land Department may, by regulation, circumscribe this procedure and require separate drillings and expenditures for each permit. Op.Atty.Gen. No. 73-36-L.

Under this section requiring holder of prospecting permit to expend a certain amount each year for exploration on state land for valuable mineral deposits for each permit, per-

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H. J. DOWNEY, INC.

EXPLORATION & DEVELOPMENT

August 8, 1991

Governor Fyfe Symington
State Capitol Building
Phoenix, AZ 85007

RE: Arizona Mining Law Change- 1989
(Senate Bill 1310)

Dear Governor Symington:

I am writing to address certain issues pertaining to the above referenced legislation enacted as an emergency measure on June 28, 1989. Enclosed is Circular No. 30 provided by the Department of Mines & Mineral Resources which summarizes the changes made and includes a copy of the new statutes. The changes were made as a result of the Arizona Supreme Court decision of December 10, 1987 (the Kadish decision).

An item of particular importance in the new legislation is found in Section 9, (the last paragraph) which states that the auditor general shall make a report of the status of mineral leasing on state lands not later than December 31, 1991 which shall include "the economic impact of the act". I assume that this report will be forthcoming on or before the due date and without knowing whether it will read positively or negatively, I offer my comments on the subject as follows:

Although considerable retroactive royalty payments have been made by ASARCO to the state as a result of rate changes, it can be expected that future income from current mining activities on state lands will decrease as marginal ore becomes waste because of excessive royalties. The state could prevent shutdowns and still receive some income from mines if it (the state) had enough leeway in adjusting rates downward during hard times or when lean grades are being encountered. Such leeway would probably be politically unpopular with certain groups such as environmental, media, and of course The Arizona Education Association, the prime mover in the Kadish case. Although the present minimum royalty rate of 2% of gross value is in most cases, livable, it could easily break some marginal deposits.

The most onerous aspect of the new law is that the royalty rate for any given prospect is left open (no maximum) to decision by the state land commissioner, such decision to be based on appraisal. Not only is there room for political bias by the commissioner and the "appraiser", the mechanics of attempting to appraise mineral worth before exploration and development work are completed is extremely difficult, at best. Furthermore, what kind of business person would agree to invest hundreds of thousands of dollars in a venture (the equivalent of exploration money on a prospecting permit) without knowing beforehand his costs of

operation? I have recently been involved in attempting to raise exploration money on prospecting permits and have been turned down because of the unknown royalty issue. It is common knowledge in the exploration field that several major companies will no longer touch state land for that reason. If it were possible to establish industry standards for royalty rates based on categories of commodities and geological environments, appraisals could be based on them. Then, at least, an investor would know what to expect and be able to make reasonable cost analyses if a prospect appeared to hold potential for a viable operation.

Whenever the auditor general's report arrives on your desk, I hope that the above comments will help in your evaluation of the future of mining and state income from mining. As it stands, both appear grim.

Sincerely,

Harold J. Downey
Harold J. Downey, Pres.
H. J. Downey, Inc.

c w/enc: Senator Gus Arzberger
Representative Stan Barnes
Glendon A. Collins
Interested parties

cc: W. D. GAY

JDS.
8/15/91
Mr Downey left
the attached for
you + asked that
I give a copy to
Bill Gay, which I
did. Mary



Department of Mines and Mineral Resources

Mineral Building, Fairgrounds

Phoenix, Arizona 85007

(602) 255-3791 Toll Free in Arizona - 1-800-446-4259

ARIZONA MINING LAW CHANGE - 1989

Circular No. 30, September 1990

Laws and requirements for prospecting permits, leases, rents and royalties for mineral deposits on State Trust Lands have been changed. The First Regular Session of the Thirty-ninth Legislature of the State of Arizona has enacted an amendment to the Arizona Revised Statutes, ARS 27-233 through ARS 27-276. The changes were made to bring the statutes into agreement with a recent Arizona Supreme Court decision, generally known as the Kadish decision, declaring certain provisions of the statutes illegal.

The changes affect minimum royalty rates, appraisals of fair market value of mineral deposits, appraisal and reappraisal of royalty rates, issuance of prospecting permits, minimum rental rates, and authority to review lessee business records.

The changes went into effect on June 28, 1989. The changes affect only locatable mineral deposits on State Trust Lands.

A copy of the new legislation, Laws of 1989, Chapter 288, Senate Bill 1310 as enacted is included at the end of this circular.

In a July 18, 1989 letter from State Land Commissioner M. Jean Hassell to mineral lease holders and prospecting permittees, the law changes were explained as follows:

1. "Before issuing a new mineral lease, the Land Department must appraise land rentals and royalty rates for mineral leases and certain minimum rates are prescribed as described hereafter:

a. The minimum royalty must be no less than 2% of the gross value of all recovered minerals or mineral products, for new mineral leases issued after the effective date of the new statute, i.e., June 28, 1989.

b. Land rentals will not be less than 75 cents per acre.

c. For existing mineral leases, the royalty rate may not be less than would have been paid under the previous mineral royalty statute, i.e., 5% of net value

after deductions for processing and transportation costs and taxes, and the new royalty rate shall be effective as of December 10, 1987.

2. For new leases, reappraisals of the royalty rate shall be made at the end of the first year of commercial production and at the renewal of the lease; and, reappraisals may be made if changes in mineral recovery technology or the discovery of new minerals substantially changes the value of the State's leasehold interest.

3. The cost of the appraisal shall be assessed against the lessee.

4. Existing state mineral leases remain in effect for the unexpired term of the lease and the Land Department within 180 days (from June 8th) shall set a new royalty and land rental for those leases which may not be lower than the previous statutory rate.

5. The land Commissioner may deny prospecting permit applications for reasons specified in the statute.

6. The Land Commissioner has the authority to review relevant lessee business records for royalty collection and appraisal purposes.

7. The Land Commissioner may auction mineral leases on lands where no mining claim has been located or where a prospecting permit or mineral lease has been terminated or not renewed by the permittee or lessee."

Laws and Regulations Governing Mineral Rights in Arizona published by the Arizona Department of Mines and Mineral Resources explains acquisition of minerals rights on state and federal land in detail. The book is recommended for anyone planning to become involved in acquiring or holding mineral rights on state or federal land in Arizona. The changes reported in this circular have not yet been incorporated into the book.

MINERAL LEASES AND MINERAL EXPLORATION PERMITS

CHAPTER 288

SENATE BILL 1310

Changes or additions in text are indicated by CAPITALS; deletions by strikeouts

AN ACT

RELATING TO MINERALS, OIL AND GAS, PRESCRIBING APPRAISAL, COMPUTATION AND ASSESSMENT OF MINERAL RENTAL, ROYALTY AND COSTS FOR STATE LANDS; PROVIDING FOR INTEREST, PENALTIES AND LIENS FOR UNPAID MINERAL RENT AND ROYALTY; PRESCRIBING APPEAL; PROVIDING FOR AUCTION OF STATE MINERAL LEASES; PRESCRIBING EFFECT, RENTAL AND ROYALTY FOR CERTAIN EXISTING LEASES; PROVIDING FOR TERMINATION OF A MINERAL LEASE BY THE LESSEE UPON WRITTEN NOTICE TO THE COMMISSIONER; PROVIDING FOR INSPECTIONS, INVESTIGATIONS, AUDITS, WRITTEN REPORT AND CONFIDENTIALITY OF CERTAIN INFORMATION; AUTHORIZING CERTAIN DISCRETIONARY ISSUANCE AND DENIAL OF STATE MINERAL EXPLORATION PERMITS, MINERAL LEASES AND MINERAL LEASE RENEWALS; MAKING CONFORMING AND TECHNICAL CHANGES; PRESCRIBING ENFORCEMENT AND AUDITOR GENERAL REVIEW AND REPORT; AMENDING SECTION 27-233, ARIZONA REVISED STATUTES; REPEALING SECTION 27-234, ARIZONA REVISED STATUTES; AMENDING TITLE 27, CHAPTER 2, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 27-234; AMENDING SECTION 27-235, 27-238 AND 27-251, ARIZONA REVISED STATUTES; AMENDING TITLE 27, CHAPTER 2, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 27-239, AND AMENDING TITLE 27, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 27-276.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 27-233, Arizona Revised Statutes, is amended to read:

27-233. Preferred right of locator to lease land;
discovery work; lease renewal.

A. The locator of a lode mining claim or claims on state lands pursuant to this article on APPROVAL OF THE STATE AND COMMISSIONER shall have a preferred right to a mineral lease of each claim within ninety days after the date of location. THE COMMISSIONER MAY DENY THE APPLICATION FOR A MINERAL LEASE FOR ANY OF THE REASONS LISTED IN SECTION 27-251, SUBSECTION B.

B. The locator of a lode mining claim located pursuant to section 27- 232 shall be required to perform the discovery work required by law for mining claims under the laws of the United States within the ninety-day period or an equivalent amount of development drilling of a reasonable value of one hundred dollars on each claim. The development drilling may be centrally located and need not be upon each individual claim, but shall be so located as to be part of a plan of development for the group, and in no event shall the minimum requirement prescribed for each individual claim be dispensed with. The locator shall not receive a lease unless he submits to the state land commissioner satisfactory proof of the performance of such discovery work within such reasonable time as the STATE land commissioner prescribes.

C. Upon application to the commissioner, not less than thirty nor more than sixty days prior to the expiration of the lease, the lessee of mineral lands, if he is not delinquent in the payment of

rental or royalty on the date of expiration of the lease, shall have a preferred right to renew the lease bearing even date with the expiration of the old lease for a term of twenty years. THE COMMISSIONER MAY DENY THE RENEWAL APPLICATION FOR ANY REASON

LISTED IN SECTION 27--251, SUBSECTION B, PARAGRAPHS 1 THROUGH 4.

Sec. 2. ~~Repeal~~

Section 27-234, Arizona Revised Statutes, is repealed.

Sec. 3. Title 27, chapter 2, article 3, Arizona Revised Statutes, is amended by adding a new section 27-234, to read:

27-234. ~~Rent; royalty; appeal; interest; penalty; lien~~

A. BEFORE ISSUING A MINERAL LEASE THE STATE LAND COMMISSIONER SHALL ESTABLISH THE ANNUAL LAND RENTAL FOR THE MINERAL LEASE. THE RENTAL SHALL BE BASED ON AN APPRAISAL THAT CONSIDERS ONLY NONMINING USES OF COMPARABLE LAND. THE ANNUAL RENTAL:

1. SHALL NOT BE LESS THAN SEVENTY-FIVE CENTS PER ACRE.

2. IS PAYABLE IN ADVANCE OF EXECUTING THE MINERAL LEASE AGREEMENT BY THE COMMISSIONER AND AT THE BEGINNING OF EACH ANNUAL PERIOD THEREAFTER.

B. IN ADDITION TO THE ANNUAL LAND RENTAL PAYMENT, A ROYALTY FEE IS IMPOSED OF AT LEAST TWO PER CENT BASED ON THE GROSS VALUE OF ALL OF THE RECOVERED MINERALS OR MINERAL PRODUCTS. THE ROYALTY RATE FOR EACH MINERAL LEASE SHALL BE THE APPRAISED TRUE VALUE OF THE LEASEHOLD INTERESTS OF THIS STATE. ESTABLISHED ACCORDING TO THE APPRAISAL STANDARD PRESCRIBED BY SUBSECTION C OF THIS SECTION AND EXPRESSED AS A PERCENTAGE OF THE GROSS VALUE. THE GROSS VALUE SHALL BE BASED ON THE MONTHLY AVERAGE PUBLISHED UNIT PRICE FOR MINERALS AND MINERAL PRODUCTS AS CITED IN COMMERCIAL COMMODITIES OR TRADING INDEXES OR TRADING JOURNALS AS DETERMINED BY THE COMMISSIONER AND SPECIFIED IN THE LEASE. IF A MINERAL PRODUCT DOES NOT HAVE A PUBLISHED PRICE, THE GROSS VALUE SHALL BE ESTABLISHED BY REFERENCE TO THE TOTAL AMOUNT PAID AT THE FIRST POINT OF SALE OR THE VALUE AT THE POINT OF USE.

C. THE COMMISSIONER SHALL APPRAISE THE RIGHT TO EXTRACT MINERALS FROM THE TRUST LAND BEFORE ISSUING A MINERAL LEASE IN ORDER TO DETERMINE WHETHER A ROYALTY RATE GREATER THAN THE MINIMUM RATE ESTABLISHED BY STATUTE IS JUSTIFIED TO OBTAIN A FAIR VALUE FOR THE MINERAL ORES OR PRODUCTS. AT THE END OF THE FIRST YEAR OF COMMERCIAL PRODUCTION, THE COMMISSIONER SHALL REAPPRAISE THE ROYALTY RATE TO DETERMINE IF THERE SHOULD BE AN ADJUSTMENT, BUT IN NO CASE THE ROYALTY RATE BE SET BELOW THE MINIMUM PRESCRIBED BY SUBSECTION B OF THIS SECTION. ROYALTY RATE APPRAISALS SHALL BE CONDUCTED ACCORDING TO STANDARD APPRAISAL METHODOLOGY TO ESTABLISH THE VALUE OF THE LEASEHOLD INTEREST OF THIS STATE BASED, TO THE EXTENT FEASIBLE, ON COMPARABLE ROYALTY RATES FOR COMPARABLE MINERAL LEASES. THE ROYALTY RATE SHALL BE REAPPRAISED AT THE TIME A MINERAL LEASE IS RENEWED AND MAY BE REAPPRAISED DURING THE TERM OF THE LEASE IF CHANGES IN MINERAL RECOVERY TECHNOLOGY OR THE DISCOVERY OF NEW MINERALS SUBSTANTIALLY CHANGES THE VALUE OF THE STATE LEASEHOLD INTEREST.

D. FOR MINES EXISTING ON STATE LANDS ON JUNE 8, 1989, THE ROYALTY PAID UNDER THIS SECTION SHALL NOT BE LESS THAN THE ROYALTY WHICH WOULD HAVE BEEN PAID UNDER STATUTES IN EFFECT IMMEDIATELY BEFORE JUNE 8, 1989.

E. THE COSTS OF ALL APPRAISALS CONDUCTED UNDER THIS SECTION SHALL BE ASSESSED AGAINST THE LESSEE AND ADDED TO THE AMOUNT DUE AS RENTAL UNDER THIS ELECTION.

F. THE DEPARTMENT SHALL REVIEW ALL STATE AND COUNTY PROPERTY TAX ASSESSMENT INFORMATION RELEVANT TO THE MINERAL LEASE. THE DEPARTMENT SHALL MAINTAIN THAT INFORMATION ON A CONFIDENTIAL BASIS AS PRESCRIBED BY SECTION 42- 108.

G. EVERY MINERAL LEASE OF THE STATE LAND SHALL REQUIRE THE LESSEE TO MAKE THE FOLLOWING RECORDS AVAILABLE ON AN ANNUAL BASIS:

1. ITEMIZED STATEMENTS OF MINERAL PRODUCTION.
2. RELEVANT TAX RECORDS.

3. ADDITIONAL RELEVANT RECORDS PERTINENT TO APPRAISAL, COMPLIANCE WITH THE LEASE AND MINERAL PRODUCTION DEEMED NECESSARY BY THE COMMISSIONER.

H. THE INFORMATION OBTAINED UNDER SUBSECTION G, PARAGRAPH 2 OF THIS SECTION AND ANY TRADE SECRETS, AS DEFINED IN SECTION 23-401, ARE CONFIDENTIAL.

I. MINERAL LESSEES SHALL MAKE MONTHLY ROYALTY PAYMENTS BASED ON THE MINERAL PRODUCTION ACTIVITY OF THE PREVIOUS MONTH.

J. APPEALS OF THE APPRAISAL DECISION OF THE COMMISSIONER MAY BE TAKEN PURSUANT TO SECTION 37-215 TO THE BOARD OF APPEALS, ESTABLISHED BY SECTION 37-213, WHICH SHALL AFFIRM, MODIFY OR REVERSE THE DECISION OF THE COMMISSIONER WITHIN ONE HUNDRED EIGHTY DAYS, DECISIONS OF THE BOARD TO APPEALS UNDER THIS SUBSECTION ARE SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. AS A CONDITION OF THE APPEAL, THE LESSEE MUST CONTINUE TO MAKE ALL RENTAL AND ROYALTY PAYMENTS DUE BASED ON THE COMMISSIONER'S FINAL APPRAISAL DECISION, AND THE COURT SHALL NOT STAY THE COMMISSIONER'S DECISION, IN WHOLE OR IN PART, PENDING A FINAL DISPOSITION OF THE CASE. THE STATE TREASURER SHALL SEGREGATE RENTS AND ROYALTIES PAID WHILE AN APPEAL IS PENDING AND SHALL NOT DISTRIBUTE SUCH MONIES TO THE STATE GENERAL FUND OR TO THE TRUST BENEFICIARIES UNTIL THE APPEAL IS COMPLETED.

K. IF A LESSEE FAILS TO PAY RENT OR ROYALTY, INCLUDING APPRAISAL COSTS UNDER SUBSECTION C OF THIS SECTION, ON OR BEFORE THE DATE THE PAYMENT IS DUE, THE AMOUNT DUE ACCRUES INTEREST AT THE RATE AND IN THE MANNER DETERMINED PURSUANT TO SECTION 42-134. IN ADDITION, IF IT IS DETERMINED THAT THE FAILURE TO PAY IS NOT DUE TO REASONABLE CAUSE, A PENALTY OF FIVE PER CENT OF THE AMOUNT FOUND TO BE REMAINING DUE SHALL BE ADDED TO THE RENT OR ROYALTY FOR EACH MONTH OR FRACTION OF THE MONTH ELAPSING BETWEEN THE DUE DATE ON WHICH IT IS PAID. THE TOTAL PENALTY SHALL NOT EXCEED ONE-THIRD OF THE RENT OR ROYALTY REMAINING DUE. THE PENALTY SO ADDED TO THE RENT OR ROYALTY IS DUE AND PAYABLE ON NOTICE AND DEMAND FROM THE COMMISSIONER.

L. IF ANY RENT, ROYALTY, APPRAISAL ASSESSMENT, INTEREST OR PENALTY IS NOT PAID BY THE LESSEE WHEN DUE, THE UNPAID AMOUNTS CONSTITUTE A LIEN FROM THE DATE THE AMOUNTS BECOME DUE ON ALL PROPERTY AND RIGHTS TO PROPERTY BELONGING TO THE LESSEE THAT ARE LOCATED ON STATE LAND.

Sec. 4. Section 27-235, Arizona Revised Statutes, is amended to read:

27-235. Offering leases at auction; terms of lease; termination

A. THE STATE LAND COMMISSIONER MAY OFFER MINERAL LEASES AT PUBLIC AUCTION, AFTER ADVERTISING, FOR STATE LAND ON WHICH A MINING CLAIM WAS NOT BEEN LOCATED OR A MINERAL EXPLORATION PERMIT OR MINERAL LEASE HAS BEEN TERMINATED OR NOT BEEN RENEWED BY THE LESSEE OR PERMITTEE. THE COMMISSIONER MAY ESTABLISH BY RULE THE PROCEDURE FOR CONDUCTING THE AUCTION, BUT BIDDING IS LIMITED TO A CASH BONUS TO BE PAID IN FULL BEFORE THE COMMISSIONER EXECUTES THE LEASE DOCUMENTS. THE LAND RENTAL AND ROYALTY RATE ARE NOT SUBJECT TO BIDDING.

A. B. Every mineral lease of state lands shall be for a term of twenty years.

B. C. The lease shall confer the right.

1. To extract and ship minerals, mineral compounds and mineral aggregates from the claim located within planes drawn vertically downward through the exterior boundary lines thereof. In case of leases made pursuant to locations under subsection A of section 27-232, SUBSECTION A, the lease shall confer extralateral rights in the discovery vein similar to those given locators upon the public domain of the United States under the provision of title 30, United States Code + section 26 (U.S. Revised Statutes, section 2322).

2. To use as much of the surface as required for purposes incident to mining.

3. Of ingress to and egress from other state lands, whether or not leased for purposes other than mining.

GD. Every mineral lease of state lands shall provide for :

1. The performance of annual labor as required by the laws of the United States, upon each claim or group of claims in common ownership, commencing at the expiration of one year from the date of location, and for furnishing proof thereof to the commissioner.

2. The fencing of all shafts, prospect holes, adits, tunnels and other dangerous mine workings for the protection of live stock **PUBLIC HEALTH AND SAFETY AND LIVESTOCK.**

3. The construction of necessary improvements and installation of necessary machinery and equipment with the right to remove it upon expiration, termination or abandonment of the lease, if all monies owing to the state under the terms of the lease have been paid.

4. The cutting and use of timber and stone upon the claim, not otherwise appropriated for fuel construction of necessary improvements, or for drains, roadways, tramways, supports, or other necessary purposes.

5. The right of the lessee and his assigns to transfer the lease.

6. Termination of the lease by the commissioner upon written notice specially setting forth the default for which forfeiture is declared, and preserving the right to cure the default within a stated period of not less than thirty days.

E. THE LESSEE OF MINERAL LEASE, IF NOT DELINQUENT IN THE PAYMENT OF RENT OR ROYALTY TO THE DATE OF TERMINATION, MAY TERMINATE THE LEASE AT ANY TIME DURING ITS TERM BY GIVING THE COMMISSIONER THIRTY DAYS WRITTEN NOTICE OF THE TERMINATION.

Sec. 5. Section 27-238, Arizona Revised Statutes, is amended to read:

27-238. Existing leases

A. Every mineral lease in effect on June 16, 1941 under the provisions of section 2973, revised code of 1928, shall remain in effect for the unexpired term for which it was granted, without right of renewal, or, at the option of the lessee, may be superseded by a lease as provided by this article.

B. EVERY MINERAL LEASE AND MINERAL EXPLORATION PERMIT ISSUED UNDER THIS ARTICLE AND ARTICLE 4 OF THIS CHAPTER WHICH HAD NOT EXPIRED OR BEEN TERMINATED BY THE DEPARTMENT AS OF JUNE 8, 1989 SHALL BE IN EFFECT FOR THE UNEXPIRED TERM FOR WHICH IT WAS GRANTED. WITHIN ONE HUNDRED EIGHTY DAYS AFTER JUNE 8, 1989 THE STATE LAND COMMISSIONER SHALL SET THE RENTAL AND ROYALTY ACCORDING TO THE APPRAISAL STANDARDS PRESCRIBED BY SECTION 27-234 FOR ANY MINERAL LEASE OR MINERAL EXPLORATION PERMIT ON JUNE 8, 1989 AND THAT RENTAL AND ROYALTY ARE EFFECTIVE AS OF DECEMBER 10, 1987.

Sec. 6. Title 27, chapter 2, article 3, Arizona Revised Statutes, is amended by adding section 27-239. to read:

27-239. Inspections, investigations and audits

A. THE STATE LAND COMMISSIONER OR THE COMMISSIONER'S AUTHORIZED REPRESENTATIVE MAY ENTER, AND THE LESSEE SHALL MAINTAIN ACCESS TO THE STATE LAND HELD UNDER A MINERAL LEASE AT REASONABLE TIMES TO INSPECT THE WORKINGS, IMPROVEMENTS AND OTHER FACILITIES USED TO EXTRACT OR SEVER MINERALS, COMMON MINERAL PRODUCTS, MATERIALS OR PROPERTY FROM STATE LANDS.

B. THE COMMISSIONER OR HIS AUTHORIZED REPRESENTATIVE MAY ENTER AT REASONABLE TIMES TO:

1. OBTAIN FACTUAL DATA OR ACCESS TO RECORDS PERTINENT TO MINERAL PRODUCTION REQUIRED TO BE KEPT UNDER THE TERMS OF THE LEASE.

2. OTHERWISE ASCERTAIN COMPLIANCE WITH LAW AND OTHER TERMS OF THE LEASE.

C. INSPECTIONS, INVESTIGATIONS AND AUDITS UNDER SUBSECTION A SHALL BE ON REASONABLE NOTICE TO THE LESSEE UNLESS REASONABLE GROUNDS EXIST TO BELIEVE THAT NOTICE WOULD FRUSTRATE THE ENFORCEMENT OF LAW OR TERMS OF THE LEASE. THE COMMISSIONER MAY, AND IF REQUIRED BY SHALL, APPLY FOR AND OBTAIN WARRANTS FOR ENTRY AND INSPECTION.

D. THE COMMISSIONER MAY REQUIRE A LESSEE TO APPEAR AT REASONABLE TIMES AND ON REASONABLE NOTICE AT THE COMMISSIONER'S OFFICE AND PRODUCE SUCH RECORDS AND INFORMATION AS ARE SPECIFIED IN THE NOTICE TO DETERMINE COMPLIANCE WITH THE TERMS OF THE LEASE.

E. THE COMMISSIONER SHALL PROVIDE TO THE LESSEE A WRITTEN REPORT OF EACH INSPECTION, INVESTIGATION AND AUDIT UNDER THIS SECTION.

F. TAX RECORDS AND TRADE SECRETS, AS DEFINED IN SECTION 23-401, OBTAINED UNDER THIS SECTION ARE CONFIDENTIAL.

Sec. 7. Section 27-251, Arizona Revised Statutes, is amended to read:

27-251. Application for mineral exploration permit

A. Any natural person over eighteen years of age and any other person qualified to transact business in this state may apply to the STATE LAND commissioner for a mineral exploration permit on the state land in one or more of the rectangular subdivisions of twenty acres, more or less, or lots, in any one section of the public land survey. Such application shall be in writing and signed by the applicant, or an authorized agent or attorney for the applicant, and shall contain the name and address of the applicant, a description according to the public land survey of the state land for which the applicant seeks a mineral exploration permit, and such other information as the commissioner may by regulation prescribe BY RULE. The application shall be filed with the STATE LAND department and shall be accompanied by payment to the department of a filing fee of twenty-five dollars. Each application meeting the requirements of this section shall be stamped by the department with the time and date it is filed with the department. The application shall have priority over any other application for a mineral exploration permit involving the same state land which may be filed with the department subsequent to such time and date, and such land shall be deemed withdrawn from location of mineral claims as long as the application is pending.

B. Not less than thirty days nor more than forty-five days from the filing of the application with the department, provided there is no prior application for a mineral exploration permit involving the same state land then pending before the department, or if such prior application is then pending but is subsequently canceled, not more than fifteen days after it is canceled, the department shall mail to the applicant, by registered or certified mail at the address shown on the application, a written notice designating the state land described in the application which, at the time the application was filed with the department, was open to entry and location as a mineral claim or claims upon discovery of a valuable mineral deposit thereon, the amount or rental required to be paid for the mineral exploration permit as therein provided, and whether a bond will be required under the provisions of section 27-255 as a condition to issuance of such permit. If, within fifteen days after the mailing of such notice, the applicant pays to the department as rental for the permit the amount of two dollars per acre for each acre of state land designated in the notice and files with the department the bond, if any, required under section 27-255, AND IF THE COMMISSIONER FINDS THAT ISSUING THE PERMIT IS IN THE BEST INTEREST OF THE TRUST, the commissioner shall issue to the applicant a mineral exploration permit for the state land designated in the notice. THE COMMISSIONER MAY DENY THE APPLICATION FOR ANY OF THE FOLLOWING REASONS:

1. THE APPLICATION WAS NOT MADE IN GOOD FAITH.
2. THE PROPOSED PROSPECTING OR POSSIBLE FUTURE MINING ACTIVITIES WOULD NOT BE THE HIGHEST AND BEST USE OF THE TRUST LANDS.
3. THE VALUE AND INCOME POTENTIAL IF SURROUNDING TRUST LANDS WOULD BE ADVERSELY AFFECTED AND THE BENEFIT FROM PROPOSED PROSPECTING AND FUTURE MINING ACTIVITY CANNOT REASONABLY BE EXPECTED TO BE GREATER THAN THE DIMINISHED VALUE OF THOSE SURROUNDING TRUST LANDS.
4. THE PROPOSED OPERATIONS WOULD VIOLATE APPLICABLE STATE OR FEDERAL LAW.
5. THE COMMISSIONER DETERMINES THAT THE PROPOSED PROSPECTING ACTIVITIES OR POSSIBLE FUTURE MINING ACTIVITIES WILL CREATE A LIABILITY TO THE STATE GREATER THAN THE INCOME FROM THE PROPOSED OPERATIONS.

C. During the period such mineral exploration permit is in force and effect no person except the permittee and the authorized agents and employees of the permittee shall be entitled to explore for minerals on the state land covered by the permit, and no mineral claim or mineral lease shall

be located or issued on such land except as provided in this article. If the applicant fails to make the payment or furnish the bond within the period of fifteen days, the application shall be deemed canceled and of no further effect.

Sec. 8. Title 27, chapter 2, article 5, Arizona Revised statutes, is amended by adding section 27-276, to read:

27-276. Enforcement
LEASES ISSUED AND EXECUTED UNDER THIS ARTICLE ARE SUBJECT TO THE ENFORCEMENT PROVISIONS PRESCRIBED BY SECTION 27-239.

Sec. 9. Auditor general review and report on state land mineral leasing

The auditor general shall review and, not later than December 31, 1991, report to the governor, the president of the senate and the speaker of the house of representatives on the status of mineral leasing on state trust lands. The review and report shall include:

1. The performance of the state land department in enforcing the provisions of this act.
2. The economic impact of this act.

Sec. 10. Emergency

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor, June 28, 1989.

Filed in the Office of the Secretary of State, June 28, 1989.



FIFE SYMINGTON
GOVERNOR

Arizona
State Land Department

1616 WEST ADAMS
PHOENIX, ARIZONA 85007



M.J. HASSELL
STATE LAND COMMISSIONER

JDS

August 16, 1991

ASAPCO

AUG 21 1991

SW LABOR

Mr. H.J. Downey
H.J. Downey, Inc.
1803 E. 10th Street
Tucson, Arizona 85719

Dear Mr. Downey:

Governor Symington has asked me to reply to your August 8 letter regarding the State Mining Law change - Senate Bill 1310. The new mineral leasing statute, Senate Bill 1310, was initiated by the Land Department in 1988 with the assistance of a number of mining industry representatives with the objective of restoring the validity of existing State mineral leases that were in effect voided by the U.S. Supreme Court's decision in the Kadish case. SB 1310 revised the mineral royalty statutes which the Court had ruled unconstitutional, and provided new groundrules for establishing royalty rates by appraisals, and for determining where prospecting and mining should be authorized on State Trust lands.

Many different interest groups, in addition to the mining industry, had input into the legislation. Much of SB 1310 was patterned after the recommendations of the March 1989 Report of the Governor's Oversight Committee on the State Land Department which was established by Governor Mofford to deal with news media criticism of the Department's mineral, grazing and urban land leasing statutes and programs. A copy of that report is enclosed in case you do not have one.

While I know that the mining industry disagrees with many aspects of SB 1310, it did succeed in preserving the existing mineral leases. In applying the statute we have negotiated sliding scale royalty rates for operating mines on State mineral leases that are based on operating costs and the price of copper. These royalty rates provide for adjustment for changing economic conditions by reducing the royalty to the minimum 2% of gross when copper prices are down and rising to allow the Trust to participate in increased profits when prices rise.

I know that the law causes some uncertainty about royalty rates for new mineral properties on State lands, and that it may discourage some prospecting and investment. However, the law is the law, and I believe that most of the mineral industry people were at the time relieved to get the law they got, and are not eager to have the issue revisited by the Legislature at this time.

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If you would like to review the way we are applying the new leasing statute, the type of mineral appraisals we have been obtaining, and the sliding scale royalty schedules we have developed for copper mines on State leases, we would be happy to meet with you. Mike Rice, Manager of our Mineral Section (542-4628) or I (542-4621) would be happy to answer any questions you have or to schedule a meeting.

Sincerely,



Glendon E. Collins
Deputy State Land Commissioner

GEC:rmp

cc: Governor Fife Symington
Joe Lane, Special Assistant to the Governor
M. Jean Hassell, State Land Commissioner
Mike Rice, Manager Minerals Section, State Land Department

cc: J.D. Sell
W.D. Gay
(8/22/91)

H. J. DOWNEY, INC.

EXPLORATION & DEVELOPMENT

ASARCO Inc.

AUG 21 1991

SW Exploration

August 19, 1991

Mr. Glendon E. Collins
Deputy State Land Commissioner
State Land Department
1616 West Adams
Phoenix, AZ 85007

RE: Discussion of SB 1310,
8/8/98 letter to Governor
Symington

Dear Mr. Collins:

Thank you for your letter of August 16, 1991 in response to my letter to Governor Symington regarding SB 1310. I had already drafted the letter when I had a meeting with Mike Rice on August 6th during which Mike explained some of the approaches your department will be using in establishing royalty rates. The discussion was quite enlightening, however I did not make major changes to the letter.

I realize that your department is caught in the middle on the issue and that having gone through the struggle to get a new law in place, that it would be next to impossible to get a legislative review of the situation at this time. I do believe, however, that the inequities in the law should be made known to all in State government from the governor on down. SB 1310 was pushed through as an emergency measure with the provision that its economic impact be reported by the auditor general on or before the end of this year.

It is my fear that the auditor general's review will deal mostly with existing leases rather than prospecting permits inasmuch as royalty income comes only from leases. Once again the prospector/exploration people will be ignored. I realize you are aware of this inequity but I question whether the average state politician has a clue to how prospecting permits are handled. As you say "the law is the law" but from my very frustrating position I will still consider SB 1310 an emergency measure which needs some "fine tuning".

I do not desire to be completely negative and I have sympathy for the position that the State Land Department is in. Thank you again for your letter and report by the Oversight Committee. I would appreciate receiving a copy of the auditor general's report when it is available.

CC: J.D. Sell
W.D. Gay
(8/22/91)

Sincerely,


Harold J. Downey