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Jaclyn Cheek, Natural Resource Specialist II
Northern Regional Land Office
Division of Mining Land and Water
3700 Airport Way
Fairbanks, Alaska 99709
Via e-mail to: Jaclyn.cheek@alaska.gov

Re: Proposed MO 1252, Mineral Closing Order for Sullivan Creek Crossing

Dear Ms. Cheek:

The Alaska Miners Association is writing to object to the proposed Mineral Closing Order, MO 1252, for the Sullivan Creek Bridge crossing on the Tanana Tofty Road. Our objection is only partially about this particular crossing. After all, the proposed 0.4-acre closing is small. Rather, the closing seems out of place with respect to past DNR policy. We do not understand whether this proposal represents a change in policy, or whether it is a special case for reasons that have not been explained.

AMA is a professional membership trade organization established in 1939 to represent the mining industry in Alaska. We are composed of more than 1,400 members that come from eight statewide branches: Anchorage, Denali, Fairbanks, Haines, Juneau, Kenai, Ketchikan/Prince of Wales, and Nome. Our members include individual prospectors, geologists, engineers, suction dredge miners, small family mines, junior mining companies, major mining companies, Alaska Native Corporations, and the contracting sector that supports Alaska's mining industry.

DNR has never had a practice of closing lands to mineral entry to protect a road, culvert, transmission tower or similar small linear feature. This practice (or lack thereof) exists for good reason. Alaska Statute gives DNR broad power to manage mining and protect public improvements of the nature of the Sullivan Bridge crossing. AS 38.05.130 requires that the miner who proposes to disrupt surface improvements "make provision to pay the owner of the land full payment for all damages sustained by the owner, by reason of entering upon the land." In other words, a miner would have to adequately compensate the state before disrupting the bridge or other improvement. As a practical matter, this statute will make it impossible for a miner to disrupt the bridge unless the resource was extremely valuable, and even in that case, the miner could be made to construct a replacement before disrupting it. In the extremely likely even that this occurred, this would mean that the state and Alaska's economy would come out ahead: the state would be adequately compensated, and the economy accommodate mining plus an adequately constructed replacement crossing.

If this statute were not enough, 11 AAC 86.145(b) gives DOT the right to make the first determination about the required amount of compensation. DNR is involved only as a last resort if the miner

disagrees with DOT's determination. DNR has the ability at that point, to agree with DOT's determination, if it is appropriate.

Further the Alaska Supreme Court has addressed the question of small public facilities on a mining claim. In *Parker v. Alaska Power Authority* No. S-6350, [913 P.2d 1089 (1996)], the Alaska Supreme Court found that a similarly small use of a mining claim by public facilities (in this case two transmission towers) was reasonable concurrent use and the miner was not subject to compensation.

Finally, there is an existing mining claim covering this area, so the proposed closing order will have no effect, unless the owner loses the claim. The proposal appears to be a symbolic closure with changes DNR's typical practice.

For all these reasons, we do not see the reason for a mineral closing order to protect DOT's building a bridge crossing. Alaska statute, regulations, and a Supreme Court decision gives DNR adequate authority to manage the land to protect the crossing without a mineral closing order. Because of this authority, and because this closing appears contrary to past DNR practice, the Association fails to understand why this closing is being proposed.

If there is some reason for this particular closing not referenced in the order, we would appreciate learning about it. If this is a new policy, adopted for reasons not explained, we would like to be a part of the discussion and to understand why DNR is taking on an extensive and needless workload at this time of budget crisis.

Thank you for the opportunity to comment. We look forward to your response.

Sincerely,



Deantha Skibinski
Executive Director