STATEMENT REGARDING FISH AND WILDLIFE RESOURCES

One of the first actions taken by the Constitutional Convention was to pass the following resolution: "That the Constitution should be a document of basic principles of fundamental law...". The aim throughout has been to avoid legislative matter, and leave this to the discretion of future legislatures.

Before the Convention convened, and since, individual delegates and particularly the Resources Committee have received many communications and heard much testimony regarding the management and regulation of Alaska's fish and game. Opinions varied greatly from advice to leave the matter entirely to the legislature, to adoption of the full "Missouri plan", supported by the Alaska Sportsmen's Council and others.

The Resources Committee considered the "Missouri plan" in detail, and decided that it was entirely legislative matter and therefore not proper material for inclusion in the Constitution. After further lengthy consideration, the committee on a split vote adopted the following language as section 5 of its committee proposal on resources: "Regulation and administration of the commercial fisheries and of the wildlife, including game fish, shall be delegated to a commission, or to separate commissions, under such terms as the legislature shall prescribe." This of course was a compromise between divergent points of view.

When the Resources Article was reported to the floor of the Convention, a motion to strike section 5 was passed by a vote of 34 to 21. Two days later, on a motion to reconsider, the same action was supported by a vote of 35 to 20.

One delegate, speaking on the floor, expressed what appeared to be the majority opinion in the following terms:

"To place these valuable resources in a third-rate place in our state government under a constitutionally established commission or commissariat would be to do a grave injustice to the resources themselves and to all the people of the future state.

"In the interest of seeing these resources accorded the recognition, the appropriations and the flexibility needed to develop and preserve them for the commercial fishermen, the sportsmen and all of the people of our State, I must oppose freezing them into the Constitution under a commission or commissariat clause.

"I desire to see them in nothing less than a principal department of our state government, which under our Constitution may be a multi-headed department with staggered terms
of office and all of the other safeguards to assure a non-
political continuity of policy and the broadest possible
authority, attention to, and preservation of Alaska's fish,
fur and game resources."

Secondly, during consideration of the Finance Article, delegates
decided overwhelmingly that there would be no more earmarked funds
in the State of Alaska "except where state participation in Federal
programs will thereby be denied." For example, this exception
allows for participation in Dingell-Johnson and Pittman-Robinson
funds.

Finally, the majority of delegates felt that sufficient constitu-
tional coverage of the matter was provided in other basic sections
of the Resources Article. An enrolled copy of the article is
enclosed, and attention is invited to sections: 2, 3, 4, 5, 6, 7,
10, 14, 15, 17, and 18.
STATE LANDS AND NATURAL RESOURCES

1. (State's Proprietary Interest). The State of Alaska has the power to provide for the utilization, conservation and balanced development of all of the natural resources, including aesthetic features, of the land and waters belonging to the State for the maximum benefit of its people.

2. (Sustained Yield). Forests, fisheries, wildlife and other replenishable resources belonging to the State shall be administered, utilized and maintained on the sustained yield principle in terms of the highest beneficial public use.

3. (General Reservations). Game fish, wildlife, fisheries and waters, wherever occurring in natural states within the State or its jurisdiction, are reserved to the people for common use.

4. (General Authorization for Facilities and Improvements). Facilities, improvements and other necessary incidents thereof, may be provided to assure fuller utilization, development, reclamation and settlement of the State lands, and fuller utilization and development of the fisheries and waters of the State.

5. (Uniform Application). Laws and regulations made for the use of natural resources must bear equally on all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.
6. (Special Acquisitions and Reservations). Sites, objects, and areas of natural beauty or of historic, cultural or scientific interest may be acquired, preserved, and administered for general public use under the laws of the State.

7. (State Public Domain). Lands and interests therein acquired by the State, including submerged and tidal lands, and not used or intended exclusively for governmental purposes or for reserved sites and areas, constitute the State public domain to be held in trust for the people of the State until disposed of in accordance with provisions of applicable acts of Congress, including the Act admitting Alaska to the Union, this Constitution and the laws of the State.

The Legislature shall provide for the selection, classification and administration of lands in the State public domain, and the several uses thereof, in such manner as will give maximum use and public benefit.

8. (Leases). The Legislature may authorize the leasing of any lands and interests therein in the State public domain, subject to the following conditions:

In granting leaseholds and in administering the State public domain and interests therein, the various potential uses of the land shall be recognized. Leases shall state use, conditions and tenure, to enable reasonable concurrent uses in the lands and
waters of the State. The Legislature shall, among such conditions, provide for payment by the party at fault for damage or injury resulting from conflicting use, for forfeiture in the event of breach of conditions and, generally, for enforcement of terms.

9. (Sales and Grants). The Legislature may authorize the sale or grant of State lands or interests therein, including specifically forests lands and the timber thereon, subject to the following conditions:

   All sales or grants of State land or interests therein shall contain reservations to the State of all mineral resources, access thereto, and access to all other resources generally reserved to the people; except that the reservation of access shall not prevent the control of trespass or compensation to surface owner or lessee for damage.

   Sales or leases of State lands of interests therein for purposes other than agriculture, or utilization of timber, shall contain reservations to the State of all timber thereon, subject to the right of the people to use concurrently or otherwise as provided by law.

10. (Public Notice and Other Safeguards). All disposals or leases of state lands or interests therein shall be preceded by pub-
lic notice and other appropriate safeguards of the public interest. Before delivery of conveyance to or possession of any state lands or interests therein, each such transaction shall be subject to review or audit by an independent state agency, as the legislature may direct, to determine compliance with law.

11. (Creation of Mineral Rights). Discovery and filing of application shall be prerequisite to the creation of a right in the minerals reserved to the State; except that prospecting permits giving exclusive right of exploration for specified periods and areas may be provided for in the explorations for oil, gas, coal, non-metalliferrous minerals customarily subject to exclusive exploration, and for the use of geophysical methods of prospecting. Prior discovery and filing shall in any event give prior right to such minerals and to issuance of permits, licenses, or leaseholds for exploration thereof. Continuance of such right shall depend upon beneficial use.

12. (Creation of Water Rights). All surface and sub-surface waters, reserved to the people for common use, shall be subject to appropriation for beneficial use as may be provided by law. Priority of appropriation shall give prior right.

13. (Access to Navigable Waters). Free access to the navigable waters of the State shall not be denied any person subject to the laws of the State, except that the State may by general law regulate and limit such access for other beneficial or public purposes.
14. (No Exclusive Right of Fishery). There shall be no exclusive right or special privilege of fishery created or authorized in the natural waters of the State.

15. (Preferences Among Beneficial Users). The Legislature shall provide for determination of the order of preference of the beneficial uses of the waters of the State and of the State public domain in order to realize the highest public purpose in terms of the potentialities of each locality. No person shall be involuntarily divested of his right to use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial or public use and then only by operation of law.

16. (Private Ways of Necessity). Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources.

17. (Residual Powers). The specific provisions of this Article shall not limit the powers of the State in relation to the utilization, development and conservation of natural resources except as specifically provided herein.
waters of the State. The Legislature shall, among such conditions, provide for payment by the party at fault for damage or injury resulting from conflicting use, for forfeiture in the event of breach of conditions and, generally, for enforcement of terms.

9. (Sales and Grants). The Legislature may authorize the sale or grant of State lands or interests therein, including specifically forests lands and the timber thereon, subject to the following conditions:

All sales or grants of State land or interests therein shall contain such reservations to the State of all mineral resources as are required by the Congress, access thereto, and access to all other resources generally reserved to the people; except that the reservation of access shall not prevent the control of trespass or compensation to surface owner or lessee for damage. Reservation of access shall not attach to conveyances of _____ acres or less in area.

Sales or leases of State lands of interests therein for purposes other than agriculture, recreation, watershed protection, wildlife propagation or utilization of timber, shall contain reservations to the State of all timber thereon, subject to the right of the people to use concurrently or otherwise as provided by law.

10. (Public Notice and Other Safeguards). All disposals or leases of state lands or interests therein shall be preceded by public notice and other appropriate safeguards of the public interest. Before delivery of conveyance to or possession of any state lands or interests
therein, each such transaction shall be subject to timely review or audit, as prescribed by law.

11. (Creation of Mineral Rights). Discovery and appropriation shall be prerequisite to the creation of a right in the minerals reserved to the State; except that prospecting permits giving exclusive right of exploration for specified periods and areas may be provided for in the explorations conducted for oil, gas, coal, and nonmetalliferrous minerals customarily subject to exclusive exploration, and for the use of geophysical and geochemical methods of prospecting. Prior discovery and appropriation shall in any event give prior right to such minerals and to issuance of permits, licenses, leaseholds or patents if authorized by Congress for the extraction thereof. Continuance of such right shall depend upon beneficial use. Patents for mineral rights, if generally authorized by the Congress shall be limited to those surface uses necessary to the extraction of mineral resources and until such time as the mineral deposits are exhausted. Known deposits of minerals shall be subject to lease without recognition of preferential right of discovery.

12. (Creation of Water Rights). All surface and sub-surface waters, reserved to the people for common use, shall be subject to appropriation for beneficial use as may be provided by law. Priority of appropriation shall give prior right.

13. (Access to Navigable Waters). Free access to the navigable waters of the State shall not be denied any person subject to the laws of the State, except that the State may by general law regulate and limit such access for other beneficial or public purposes.
STATE LANDS AND NATURAL RESOURCES

It is the policy of the State to foster and encourage settlement and development through the maximum use and availability of its resources consistent with the public interest and the avoidance of waste, and to that end it is the intent of this Article to extend to all peoples the opportunity of participation in Alaska's heritage.

1. (State's Proprietary Interest). The State of Alaska has the power to provide for the utilization, conservation and balanced development of all of the natural resources, including aesthetic features, of the land and waters belonging to the State for the maximum benefit of its people.

2. (Sustained Yield). Forests, fisheries, wildlife and other replenishable resources belonging to the State shall be administered, utilized and maintained on the sustained yield principle in order to achieve the highest beneficial public use.

3. (General Reservations). Game Fish, wildlife, fisheries and waters, wherever occurring in their natural states within the State or its jurisdiction, are reserved to the people for common use.

4. (General Authorization for Facilities, Improvements and Services). Facilities, improvements and services may be provided to assure fuller utilization, development, reclamation and settlement of the State lands, and fuller utilization and development of the fisheries and waters of the State.
5. (Uniform Application). Laws and regulations made for the use of natural resources must bear equally on all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

6. (Special Acquisitions and Purposes). Sites, objects, and areas of natural beauty or historic, cultural or scientific interest may be acquired, preserved, and administered for the use, enjoyment and welfare of the people under the laws of the State.

7. (State Public Domain). Lands and interests therein acquired by the State, including submerged and tidal lands, and not used or intended exclusively for governmental purposes or for reserved sites and areas, constitute the State public domain. Such lands and interests therein are to be held in trust for the people of the State and shall be disposed of only in accordance with provisions of applicable acts of Congress, including the Act admitting Alaska to the Union, this Constitution and the laws of the State.

The Legislature shall provide for the selection, classification and administration of lands in the State public domain, and the several uses thereof, in such manner as will give maximum use and public benefit.

8. (Leases). The Legislature may authorize the leasing of any lands and interests therein in the State public domain, subject to the following conditions:

In granting leaseholds and in administering the State public domain and interest therein,
the various potential uses of the land shall be recognized. Leases shall state use, conditions and tenure, to enable reasonable concurrent uses in the lands and waters of the State. The Legislature shall provide, among other conditions, for payment by the party at fault for damage or injury resulting from concurrent use, for forfeiture in the event of breach of conditions and, generally, for enforcement of terms.

9. (Sales and Grants). The Legislature may authorize the sale or grant of State lands or interests therein, including specifically forest lands and the timber thereon, subject to the following conditions:

All sales or grants of State land or interests therein shall contain such reservations to the State of all mineral resources as are required by the Congress, access thereto, and access to all other resources generally reserved to the people; except that the reservation of access shall not impair the owners' full beneficial use, prevent the control of trespass nor preclude compensation for damage.

10. (Public Notice and Other Safeguards). Disposals or leases of state lands or interests therein shall be preceded by such public
notice and other appropriate safeguards of the public interest as the Legislature shall determine. Each such transaction shall be subject to review or audit, as prescribed by law.

11. (Creation of Mineral Rights). Discovery and appropriation shall be the basis for establishing a right in those minerals heretofore subject to location under the Federal Mining Laws and now reserved to the State. Prior discovery and filing shall give prior right to such minerals and to issuance of permits, licenses, leaseholds, or patents if authorized by the Congress, for the extraction thereof. Prospecting permits giving exclusive right of exploration for specific periods and areas may be provided for exploration conducted for coal, oil, gas, oil shale, sodium, phosphate, potash, sulphur, and other Mineral Leasing Act minerals and for the use of geophysical, geochemical and similar methods of prospecting for all minerals. Issuance, type, and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulphur and other Mineral Leasing Act minerals shall be as provided by law. Surface uses of the land shall be limited to those necessary to the extraction of the mineral deposits and continuance of such right shall depend upon beneficial use as prescribed by law.

12. (Creation of Water Rights). All surface and sub-surface waters, reserved to the people for common use, shall be subject to appropriation for beneficial use as prescribed by law. Priority of appropriation shall give prior right. An appropriation of water, except for municipal water supply, shall be limited to stated uses
and be subject to concurrent appropriation for other beneficial uses and the general reservation of fish and wildlife to the people for common use.

13. (Access to Navigable Waters). Free access to the navigable waters of the State shall not be denied any person, residents of Alaska or of any State or Territory of the United States, except that the State may by general law regulate and limit such access for other beneficial or public purposes.

14. (No Exclusive Right of Fishery). There shall be no exclusive right or special privilege of fishery created or authorized in the natural waters of the State.

15. (Preferences Among Beneficial Uses). The Legislature shall provide for determination of the order of preference of the beneficial uses of the waters of the State and of the State public domain in order to realize the highest public purpose in terms of the potentialities of each locality. No person shall be involuntarily divested of his right to use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial or public use and then only by operation of law.

16. (Private Ways of Necessity). Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources.

17. (Residual Powers). The specific provisions of this Article shall not limit the powers of the State in relation to the utilization, development and conservation of natural resources except as specifically provided herein.
AMENDMENT TO (COMMITTEE) PROPOSAL NO. 8/a

MR. PRESIDENT:

I move that (Committee) Proposal No. 8/a be amended as follows:

Section 13, page 5, line 18, after the word "all" insert "surface and subsurface".

Section 12, page 4, line 17, strike "now" and substitute "thereafter".

Section 17, page 6, line 17, change period to a comma and add "and just compensation for such taking, as well as for the taking of or damage to inferior property rights, shall be made." (word "subordinate" substituted by R. Rivers for word "inferior"). So adopted."

Section 16, line 12 after word "only" insert the following: "with just compensation and"

Section 2, page 1, strike marginal title and substitute therefor: "General Authority".

Section 12, page 5, line 4, insert "either" before "the".

Section 12, page 5, line 14, strike "non-metallic".

Section 8, page 3, line 13, strike lines 13 and 14 and insert in lieu thereof "selection of lands granted to the State by the United States, and for the administration of the State public domain."

Section 13, page 5, line 20, after word "use", insert comma and add "except mineral and medicinal waters".

XXXIX
AMENDMENT TO (COMMITTEE) PROPOSAL NO. 8/a

MR. PRESIDENT:

I move that (Committee) Proposal No. 8/a be amended as follows:

Page 1, line 4, place a period after the word "interest" and strike the rest of the paragraph.

Section 4.
Page 2, line 7, strike comma after "waters" and insert "as defined by the Legislature,".

Section 11.
Page 4, line 3, strike "mineral or water", and strike on lines 5 and 6, "and to all other resources reserved to the people", retaining the semi-colon.

Section 11., page 4, line 7, strike "beneficial".

Section 13, page 4, lines 16 and 17, strike the words "during the year 1955", and insert "upon the date of ratification of this Constitution by the people of Alaska".

Section 13, page 5, line 10, strike "prospecting".

Section 14, page 5, line 25, insert a period after the word "legislature" and strike the balance of the section.

Section 2, the words "belonging to the State" on line 15 be placed after the word "resources" on line 14.

Section 5.
Strike Section 5.

Section 12, page 5, line 15, insert a period after "law" and insert "Like permits and leases may also be authorized by law"; strike word "and".
MR. PRESIDENT:

I move that (Committee) Proposal No. 8/a be amended as follows:

Section 9, page 3, line 16, after third word "of" add the words "and the issuance of exploration permits on"; Section 12, page 5, line 11, after the word "areas" insert a comma and add "subject to reasonable concurrent exploration as to different classes of minerals,".
Mr. President:

I move that (Committee) Proposal No. 8 be amended as follows:

Page 1, line 10, strike "now"; page 1, line 11, strike period and add "upon the date of ratification of this constitution by the people of Alaska."

Section 2, pages 1 and 2, strike lines 15, 16 and 17 of page 1 and strike through "state," on line 1 of page 2.

Page 2, line 6, change period to a comma and add: "subject to preferences among beneficial uses".

Page 2, line 7, strike "as defined by the Legislature" and insert the same language on page 6, line 2, following word "state".

Page 4, lines 1 and 2, strike "or interests therein".

Page 5, line 20, the insert material should follow "shall" instead of "use" and be set off by commas.

Page 5, line 24, strike "of" and substitute "among".
Dear Mr. President:

Your Committee on Resources presents for your consideration and adoption its proposed Article on Resources.

The Committee proposal, while incorporating many of the ideas contained in Convention proposals, is a Committee proposal and is unanimously endorsed by the Committee.

A section by section commentary on the subject matter has been prepared by your Committee for the use of the Delegates to the Convention.

Respectfully submitted,

W. O. Smith, Chairman
Burke Riley
John Boswell
Ada B. Wien
Leonard King
B. D. Stewart
Peter R. Reader
Barrie M. White
Truman C. Emberg
CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 8

Introduced by Committee on Resources

STATE LANDS AND NATURAL RESOURCES

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution:

ARTICLE ON STATE LANDS AND NATURAL RESOURCES

1. It is the policy of the State to foster and encourage settlement and development through the maximum use and availability of its resources consistent with the public interest and the avoidance of waste, and to that end it is the intent of this Article to extend to all peoples the opportunity of participation in Alaska's heritage.

Section 1. The State of Alaska has the power to provide for the utilization, conservation and balanced development of all of the natural resources, including aesthetic features, of the land and waters belonging to the State for the maximum benefit of its people.

Section 2. Forests, fisheries, wildlife and other replenishable resources belonging to the State

Committee Proposal No. 8 (Tentative)
shall be administered, utilized and maintained on
the sustained yield principle in order to achieve
the highest beneficial public use.

General

Reservations 5  Section 3. Game fish, wildlife, fisheries and
waters, wherever occurring in their natural states
within the State or its jurisdiction, are reserved
to the people for common use.

General Authorization for Facilities, Improvements and Services

Uniform Application

Special Acquisitions and Purposes

State Public Domain

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governmental purposes or for reserved sites and areas, constitute the State public domain. Such lands and interests therein are to be held in trust for the people of the State. These lands and interests may be disposed of only in accordance with provisions of applicable acts of Congress, including the Act admitting Alaska to the Union, this Constitution and the laws of the State.

The Legislature shall make provision for the selection, classification and administration of lands in the State public domain, and the several uses thereof, in such manner as will give maximum use and public benefit.

Leases

Section 8. The Legislature may authorize the leasing of any lands and interests therein in the State public domain, subject to the following conditions:

In granting leaseholds and in administering the State public domain and interests therein, the various potential uses of the land shall be considered. Leases shall state use, conditions and tenure, to enable reasonable concurrent uses in the lands and waters of the State. The Legislature shall provide, among other conditions, for payment
by the party at fault for damage or injury arising from noncompliance with terms
governing concurrent use, for forfeiture
in the event of breach of conditions and, generally, for enforcement of terms.

Section 9. The Legislature may authorize the sale or grant of State lands or interests therein, subject to the following conditions:

All sales or grants of State land or interests therein shall contain such reservations to the State of all mineral resources as are required by the Congress, access thereto, and access to all other resources generally reserved to the people; except that the reservation of access shall not impair the owners' full beneficial use, prevent the control of trespass nor preclude compensation for damage.

Section 10. Disposals or leases of state lands or interests therein shall be preceded by such public notice and other appropriate safeguards of the public interest as the Legislature shall determine. Each such transaction shall be subject to review or audit, as prescribed by law.
Creation of Mineral Rights

Section 11. Discovery and appropriation shall be the basis for establishing a right in those minerals heretofore subject to location under the Federal Mining Laws and now reserved to the State. Prior discovery and filing shall give prior right to such minerals and to issuance of permits, licenses, leaseholds, or patents if authorized by the Congress, for the extraction thereof. Continuance of such right shall depend upon beneficial use as prescribed by law.

Prospecting permits giving exclusive right of exploration for specific periods and areas may be provided for exploration conducted for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, and other Mineral Leasing Act minerals and for the use of geophysical, geochemical and similar methods of prospecting for all minerals. Issuance, type, and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulphur and other Mineral Leasing Act minerals shall be as provided by Law.

Surface uses of the land shall be limited to those uses necessary to the extraction of the mineral deposits, and continuance of such right shall depend upon beneficial use as prescribed by law.
Section 12. All surface and sub-surface waters, reserved to the people for common use, shall be subject to appropriation for beneficial use as prescribed by law. Priority of appropriation shall give prior right. An appropriation of water, except for municipal water supply, shall be limited to stated uses and be subject to concurrent appropriation for other beneficial uses and to the general reservation of fish and wildlife to the people for common use.

Section 13. Free access to the navigable waters of the State shall not be denied any person resident of Alaska or of any State or Territory of the United States, except that the State may by general law regulate and limit such access for other beneficial or public purposes.

Section 14. There shall be no exclusive right or special privilege of fishery created or authorized in the natural waters of the State.

Section 15. The Legislature shall provide for determination of the order of preference of the beneficial uses of the waters of the State and of the State public domain in order to realize the highest public purpose in terms of the potentialities of each locality. No person shall be involuntarily
1. divested of his right to use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial or public use and then only by operation of law.

Section 16. Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources.

Section 17. The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska.

Section 18. The specific provisions of this Article shall not limit the powers of the State in relation to the utilization, development and conservation of natural resources except as specifically provided herein.
Commentary on Article on State Lands and Natural Resources

(Sec. 1 States' Proprietary Interest)
This section is a general grant of authority to the State for the utilization and development of all resources over which the State has a proprietary interest. This includes all game fish, wildlife, fisheries, waters and those lands and related land uses including mineral rights, etc., that may be acquired by the State through grants from the United States or by other means. Authority over private lands and resource interests is not provided in this Article except as that authority is generally reserved in Section 18.

(Sec. 2 Sustained Yield)
Sustained yield is recognized as a principle applicable to the administration of plant and animal life subject to the immediate authority of the State. This provision applies generally to wildlife and fisheries anywhere in the State and to the forests and other replenishable resources including grass which occurs on lands in the State public domain. This principle is qualified in terms of "the highest beneficial public use" in recognition of its not being in the public interest to preserve certain parasitic or predatory organisms destructive of more beneficial plant and animal life. The reference of this section is to the State of Alaska, and not to any particular parcel of land or any particular body of water.
(Sec. 3 General Reservations)

Game fish, wildlife, fisheries and water are recognized as belonging to the State so long as in a natural state. These resources are subject to a private right only when they have been acquired or utilized as provided by law. For example, a private person has no right to buy and sell wild animals in their natural state, but once an animal is taken in compliance with law, it becomes the property of the taker, subject to use or disposition within the law. This provision does not apply to the domestication of fur-bearing animals or other animals subject to intensive culture or the fish in private ponds. The ownership of water is generally recognized as vesting in the state. Private rights can be acquired only to the use of water.

(Sec. 4 General Authorization for Facilities, Improvements and Services)

This general authorization is made to facilitate the development of the State's natural resources. In localities where lands are susceptible to general agricultural development, the State would have authority to undertake improvements in providing roads or improvements on the land in preparation for settlement of the land. Where improvements or facilities may be essential to the development of fisheries and water resources, the State would have the authority to undertake those developments. Such developments could require the services of technical specialists and advisors who can assist citizens of the State on technical problems involving the
improvement of production and resource utilization in much the same way that the farm agent has worked on problems of agricultural production and the Forest Service has rendered aid to private owners of standing timber.

(Sec. 5 Uniform Application)
This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to the disposition of the State.

(Sec. 6 Special Acquisition and Reservations)
General authority is granted the State to acquire special sites, objects or areas of scenic, historic, cultural or scientific interest, to reserve similar sites, objects or areas in the state public lands and to administer these special sites, objects, and areas for general public use. These sites, objects or areas might ultimately become state monuments or parks.

(Sec. 7 State Public Domain)
This section defines the State public domain to include all lands and interests therein that are acquired by the State except for (1) lands used or intended to be used exclusively for governmental operations and (2) those sites and areas that have been acquired or reserved for special scenic, historic, cultural or scientific interests. The lands, and interests therein, in the State Public Domain are to be held in trust for the people of the state until disposed of in accordance with provisions of federal
law, the State Constitution and State Law. Should terms of enab­ling legislation covering grants of lands to the State be modified before passage, the language of this section would avoid necessity of amending the Constitution.

General authority is granted to the Legislature to provide for the selection, classification and administration of the State Public Domain. The Enabling Bill provides for State selection of granted lands. Classification, or examination by whatever means, will be the process whereby the State determines what lands it will wish to select. The Legislature is given general authority to provide for the general administration of the State public domain in order to assure maximum use and public benefit in the several uses of those lands.

(Sec. 8 Leases)

The Legislature is authorized to lease State lands or interests therein. In granting leases, the potential uses of the land are to be considered so that maximum benefit can be derived. Each lease shall state the particular use or uses to be made of the lands as well as the conditions of the use and the term or tenure of the lease in order to facilitate reasonable concurrent use by others if occasion arises. "Reasonableness" of concurrent uses implies that possibilities of conflict in use should be kept to a minimum. Provisions of liability, forfeiture and other means of enforcement of the lease are to be provided in the instrument.
(Sec. 9 Sales and Grants)

Sales and grants of State lands and interests therein are generally authorized with provision for reservation of mineral rights and for reservations of access. The reservation of mineral rights is prompted by provisions of the Enabling Bill. Mineral deposits in such lands shall be subject to lease by the State as the Legislature may direct.

The reservation of mineral rights in the proposal is in conformity with the proposed enabling bill, H.R. 2535, of the 84th Congress.

Reservation of access is required on all grants or sales of state land so as to assure access to reserved mineral rights and to those resources generally reserved to the people by Section 3 of the proposal. While-reserving access, the section explicitly provides that these rights of access shall not impair the owner's full beneficial use, shall permit the control of trespass and allow for compensation for damages done to the owner of the land.

(Sec. 10 Public Notices and Safeguards)

Certain safeguards of the public interest are essential in public land transactions. Such transactions may vary in importance from routine matters to those of substantial value. If general constitutional provisions impose too rigid requirements, the land administration can become hopelessly ensnarled in red tape. As a result this section of the Constitution provides for the Legislature to establish public notice, review or audit and other safeguards to
protect the public interest. As requirements change and many transactions become routine, appropriate modifications can be made in procedures if rigid requirements are not specified in the Constitutions itself.

(Sec. 11 Creation of Mineral Rights)

With the restrictions on the sale, grant or patent of mineral lands as provided in the proposed Enabling Bill and in Section 9 of the proposal, this section recognizes the established pattern of mining rights as applied to a system of leaseholds or limited patents. This established system of mining law recognizes the preferential right of a prospector to a mineral deposit on the basis of discovery and appropriation. Appropriation involves both location and filing. All mining law requires continued beneficial use (assessment work) to maintain a mining claim.

These elements of mining law were described by Costigan in his standard works on American Mining Law when he stated, "They (mining laws) all recognize discovery followed by appropriation, as the foundation to the possessor's title and development by working as the condition of its retention." This conception underlies the statement of mineral rights contained in Section 11.

Exceptions to these general rules applicable to mineral rights have become recognized through the Mineral Leasing Act of 1920 as amended. The fuel minerals of oil, gas, oil-shale and coal and phosphates, potash and other non-metallic minerals have been developed under a lease system which involves exclusive right
to prospect certain areas over a given period of time subject to payment of certain royalties if commercial development is undertaken. This is the reason for making exceptions of these non-metallic minerals and for the newer forms of geophysical and geochemical prospecting. Otherwise the right of an ordinary prospector to search for mineral deposits is fully recognized and he is recognized as having a preferential right to the appropriate permit, license or lease, for the extraction of these mineral deposits. The prospector's preferential right would presumably be transferable in the same manner that a claim can be conveyed today.

Section 11 is so phrased as to permit patenting of claims on state land should Congress remove the anticipated restrictions and the Legislature so provide. However in adapting the ideas behind the Act of July 23, 1955 to Alaskan conditions, restrictions are placed upon claims and patents so that the surface uses of the land shall be limited to those uses necessary to the extraction of the mineral deposits and so long as beneficial use is maintained. The land will be available for construction of mining works, the disposition of mining wastes and for the timber necessary in mine construction. However, forests on these lands would not be generally available to the mineral claimant. The further requirement of beneficial use is to assure that the lands patented for mineral purposes will revert to public control when for example, mining has ceased, the mineral deposits have been exhausted or the property abandoned, which situations would depend on legislative definition of "beneficial use".
(Sec. 12 Creation of Water Right)

This section provides for the prior-appropriation system of water rights generally used in the western states and in Alaska. The prior appropriation system recognizes the principle of "first come; first served", or "first in time; first in right" which is also the basic principle of mining law. Here again the concept of appropriation involves filing an application for stated quantities of water for stated uses at specific locations. The preservation of a prior appropriation right to water requires continued beneficial use. Concurrent use is recognized to assure maximum utilization. Water used for the generation of hydro-electric power for example is also subject to appropriation for domestic consumption or other uses that do not conflict with those for which prior appropriations have been made. Appropriations are subject to the general reservation of fish and wildlife provided in Section 3 so that reservoirs shall not exclude fish and wildlife remaining in natural states from coming under the provision of their general reservation to the people.

(Sec. 13 Access to Navigable Waters)

This section assures free access to the navigable waters of the state for "any person resident of Alaska or any state or territory of the United States." However such access may be limited by other beneficial purposes such as the construction of dam or other water-works. Since the control of navigable waters
is a Federal question within the province of Congressional authority, any actions taken by the Federal government would supersede this constitutional provision.

(Sec. 14 No Exclusive Right of Fishery)

This section is intended to serve as a substitute for the provision prohibiting the several right of fisheries in the White Act. Instead of using the terminology of that Act the purposes sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the State.

(Sec. 15 Preferences Among Beneficial Uses)

This is a basic provision found in the resource codes and constitutions of several of the Western States. Orders of preference are usually made for water uses such as domestic or industrial consumption, irrigation, fisheries, hydro-electric power production, etc. With Alaska's diversity of conditions, provision was made to vary the determination of priorities of use according to the potentialities of any particular locality, area or region. Again this provision is limited in bearing on the waters of the State and on the State Public Domain where the state maintains its proprietary interest, and not upon private or federal land holdings.

The provision for divestment of right allows eminent domain proceedings to be used in permitting a higher use only. As among users of the same order of priority, the power of condemnation cannot be used. Under this type of provision the state may have granted a mining lease for placer mining in a river bed.
stream had important hydro-electric potentialities a power company might desire to use a site, which would cause the flooding of the mine. If the hydro-electric development was determined to be a higher beneficial use, the mining properties might be acquired by appropriate legal action with just compensation for the interests and improvements of the conflicting mining use.

The last sentence, protecting any person from involuntary divestment of property rights and interests, is generally applicable to any established right and might be relied upon to protect persons who claim possessory rights to tidelands in coastal areas where substantial improvements have been made in docks, wharves or other waterfront facilities and homes.

(Sec. 16 Private Ways of Necessity)

This provision was borrowed from the Wyoming Constitution and modified to meet Alaskan conditions. The Wyoming provision states, "Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes, or ditches on or across the lands of others for agricultural, mining, domestic or sanitary purposes, nor in any case without due compensation." In that arid state this provision was developed to assure access to water supply even though it might be necessary for a private person to secure easement across adjoining private lands. Since the adoption of the Wyoming Constitution, a number of western states have
included a similar provision in their constitutions. Since the problem of essential access in Alaska is not limited to water supply as in Wyoming this article makes only a general provision for the use of eminent domain proceedings to provide essential access for extraction and utilization of natural resources.

(Sec. 17 State Boundaries)

This is the same boundary statement set forth in H.R. 2535.

(Sec. 18 Residual Powers)

The Article on State Lands and Natural Resources is primarily concerned with the State's proprietary interests in the State public lands, waters, wildlife and fisheries. This section explicitly states that the other provisions in the Article on State Lands and Natural Resources shall not limit the exercise of the general police powers of the State to provide for the utilization, development and conservation of natural resources in general, including those in private ownership.

Regulation of stream pollution, the prohibition of fish-traps and fire control in timber areas are illustrations of action taken under general public police powers to provide for public health, safety or the general welfare which may affect resource development, utilization or conservation on both public and private lands.
Constitutional Convention
Committee Proposal 8/a
Date: January 16, 1956

ALASKA CONSTITUTIONAL CONVENTION
REPORT OF THE COMMITTEE ON RESOURCES

Hon. William A. Egan, President
Alaska Constitutional Convention

Your Committee on Natural Resources submits for considera-
tion of the Convention the attached proposed Article No. 8, as
a Committee Substitute for tentative committee Proposal No. 8
earlier submitted. Accompanying said Proposal is a revised
Commentary.

The Committee has considered the following Delegate
Proposals and reports on them as follows:

Sections 1 & 2 of Proposal 5 have been incorporated in
part in the Committee Proposal.

Section 3 was not incorporated in the Committee Proposal
and, in the Committee's opinion, might properly be
considered by the Committee on Resolutions.

Section 13, Proposal No. 6 is believed to be more
properly the concern of Finance, Ordinances and
Transitional Matters.

In the Committee proposal matters proposed in delegate
Proposal No. 7 are touched upon in part and the way left clear
for such future Legislative action as may be desired.

The Committee recommends for reference to the Resolutions
Committee and to the next Territorial Legislature the proposition that the Territorial Legislature put in motion, through its Legislative Council or otherwise, a comprehensive study of necessary legislation in the resources field to implement this proposed Article. It is recognized that in most respects Legislation based on such study will be the province of the State Legislature, yet the Committee feels that the undertaking will be of such scope and magnitude that early attention should be given it.

Sections 5 & 6 of Proposal No. 9 are in part incorporated in Section 6 of the Committee Proposal.

Sections 6 & 7 of Proposal 17 are in substance incorporated in this Proposal.

Proposal 18 is in part incorporated in Section 10 of this Proposal.

Proposal 26 was considered beyond the province of the Committee and without the scope of the Constitution. However, the Committee recommends that the Convention adopt a suitable resolution addressed to appropriate Federal agencies now in position to remedy the situation which Proposal 26 seeks to reach.

Sections 1, 3, 4, and 5 of Proposal 30 are covered generally in this Proposal, while Sections 2 and 6 are not.

Proposal 32 is merged in this proposal.
Both before and since the submission of Proposal 33, the abolition of fishtraps received the Committee's searching attention. While the Committee Proposal does not mention traps, the Committee urges an expression in this respect by the Convention, and recommends that the Convention adopt an appropriate Resolution or Ordinance as a means of hastening the abolition of traps.

Respectfully submitted,

W. O. Smith, Chairman
Burke Riley
John C. Boswell
Ada B. Wien
Leonard King
B. D. Stewart
Peter L. Reader
Barrie M. White, Jr.
Truman C. Emberg
Constitutional Convention of Alaska

Proposal No. 5

Introduced by R. R. Robertson

DEFINITION OF NATURAL RESOURCES, AND THEIR CONTROL

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution:

1. Natural resources are the land and the sea and all things animate, inanimate, solid, liquid and gaseous, naturally in, on or of them, either upon or under the surface, and the atmosphere and all things in or of it, and all waters that stand or fall upon or that flow across, through or under the land or that flow, empty into or fall upon the sea or any other body of water, and all wild animals, fowl, and fish. Things, waters, animals, fowl and fish which have been reduced to private ownership are not natural resources.

2. Natural resources shall be controlled, managed, conserved, restored, and utilized for the best interests of the state, and shall be subject to disposal by sale and lease upon such terms and conditions as the Legislature may ordain. Such natural resources as are required for the state's own use or which are required for use in common by the public shall not be disposed of by sale or lease, except they may be temporarily leased. Sale of natural resources shall be so conditioned that use or nonuse thereof shall not injure or destroy any other natural resources or private possession.
3. Control, management, restoration, conservation, utilization, and regulation of natural resources may be in such commissions as the Legislature may ordain, but joint control of wildlife resources shall not be combined with commercial utilization and development of natural resources.
RESOLVED, that the following be agreed upon as part of the Alaska State Constitution.

Sec. 1. Every person has a right to education to the fullest extent of the capabilities of each person and to the extent permitted by the facilities of the state.

Sec. 2. The State's responsibility for the education of its people is here declared to be clear, positive and final. The Legislature may delegate by statute its responsibility, power and authority to local communities or political subdivisions of the State, but such authority when delegated may be extended, withheld or withdrawn at any time the Legislature deems it necessary or expedient. It is the intent and purpose of this article that Education shall be free from the domination and control of any branch, department, or official of the state government, or from any professional group or person, and reserving all final control, power and authority to the people of the State, through their chosen representatives, the Legislature.

Sec. 3. The Legislature shall provide for the establishment, maintenance and support of a uniform system of free public schools, and such other educational institutions for specialized training and for the education of the physically and
mentally handicapped as may be deemed desirable. Such insti-
tutions shall be non-sectarian, non-political, and open and
available to all without regard to race, color, creed or age.

Sec. 4. The Legislature shall provide for the compulsory
attendance at some public school, unless other state approved
means of education are provided, of all the children in the
state who are sound in mind and body between the ages of
eight and sixteen, provided, however, the Legislature in its
discretion shall have power to require a greater range of com-
pulsory attendance, but in no case shall the range herein
given be reduced.

Sec. 5. The English language shall be the official language
of the School System and shall be taught in all schools of the
state whether Public, private, denominational or parochial.

Sec. 6. The Legislature may provide for the establishment of
private schools by individuals, groups, institutions or corp-
orations under charter from the State. The State shall estab-
lish minimum educational standards for such schools, but such
schools shall be secure in the right to teach such principles
as the governing body shall decide over and above the State
requirements, provided such teachings are not otherwise con-
trary to the statutes or the constitution of the State.

Sec. 7. No public funds from whatever source, local or state,
shall be used directly or indirectly for the support, opera-
tion or maintenance, including transportation and other auxil-
Section 8. All local and state school property, except income property, shall be exempt from any form of state or local taxation.

Section 9. The Legislature shall provide for the recall for cause of any elected or appointed person or official connected with the Public School System.

Section 10. The general appropriations bill shall include appropriations for the support and maintenance of Public education. All funds so appropriated for schools shall have first priority on state funds after funds appropriated for the salaries of state officials.

Section 11. The Teachers' Retirement System shall be deemed a contract between the individual members and the State, and the Legislature shall make no laws or any other provisions which shall diminish or impair this obligation. The Legislature shall provide the manner of selecting the securities for the investment of any Retirement Funds, prescribe the rules and regulations and conditions upon which such funds shall be invested, and do all things necessary for the safety of the fund, and the State shall reimburse said Retirement fund for all losses thereof which may in any manner occur.
Sec. 12. The State shall incur no public school debt without first obtaining sanction of the people of the State in a state-wide referendum, and no local school unit shall incur any debt for any school purpose without first obtaining the approval of the people of the local unit.

Sec. 13. (a) The State hereby accepts all grants of land and donations of money made by the United States under the provisions of the Enabling Act, any other Acts of Congress, for the uses and purposes and upon the conditions, and under the limitations for which the same are granted or donated; and the faith of the State is hereby pledged to preserve such lands and moneys derived from the sale of any said lands as a sacred trust, and to keep the same for the uses and purposes for which they were granted or donated.

(b) All proceeds of the sale of public lands that have heretofore been or may be hereafter given by the United States for the use and benefit of the Public Schools of the State, all such per centum as may be granted by the United States on the sales of public lands, timber, mineral or petroleum products, the proceeds of all property that shall fall to the State by escheat, the proceeds of all defunct school property, the proceeds of all gifts or donations to the State for Public Schools not otherwise appropriated by the terms of the gift, and such other appropriations, gifts or donations as shall be made by the Legislature, the United States,
any corporation, any person or institution for the benefit of the Public Schools, shall constitute the permanent school fund, the income from which shall be used for the maintenance of the Public Schools of the State. The principal shall be deemed a trust fund held by the State, and shall forever remain inviolate. It may be increased, but shall never be diminished. The State shall reimburse said permanent school fund for all losses thereof which may in any manner occur, and no portion of said fund shall be diverted for any other use or purpose.

(c) The interest and income of the permanent school fund, the net income from the leasing of public lands which have been or may be granted by the United States to the State for the use and benefit of the Public Schools, together with any revenues derived from taxes authorized to be levied for such purpose, any other sums which may be added thereto by law, shall be used and applied each year for the benefit of the Public Schools of the State, and no part of the fund shall ever be diverted from this purpose, or used for any other purpose than the support and maintenance of Public Schools for the equal benefit of all the people of the State.

(d) All public lands set apart to the State by Congress for charitable, penal, educational and public buildings purposes, and all lands taken in lieu thereof, may be sold by the State under such rules and regulations as the Legislature may pre-
scribe, in conformity with the regulations of the Enabling Act.

(e) The Legislature shall provide for the investment of the permanent school funds and other educational funds, but in no case shall such funds be loaned to the State or any political subdivision of the State. The Legislature shall provide the manner of selecting the securities for such funds, prescribe the rules and regulations, restrictions and conditions upon which such funds shall be loaned or invested, and do all things necessary for the safety of the funds and permanency of the investment. The State shall reimburse said permanent school fund and other educational funds for all losses there­of which may in any manner occur, and no portion of said funds shall be diverted for any other use or purpose.

Sec. 14. The enumeration in this article of specific func­tions shall not be construed as limitations upon the powers of the State government. The State government shall have full power to act for the government and good order of the State, and for the health, safety and welfare of its citizens, by all necessary and convenient means, subject only to the limitations prescribed in this constitution and in the Consti­tution of the United States.
Constitutional Convention of Alaska

PROPOSAL No. 7

Introduced by Maurice T. Johnson

Dealing with Wildlife Conservation

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution.

Sec. 1. The control, management, restoration, conservation and regulation of the bird, game fish, game, fur, and all wildlife resources of the State, including hatcheries, sanctuaries, refuges, reservations and all other property owned, acquired, or used for such purposes and the acquisition and establishment thereof, and the administration or all laws pertaining thereto shall be vested in a wildlife commission consisting of four members appointed by the governor, not more than two of whom shall be of the same political party. The Legislature shall fix the qualifications, terms and compensation of the members of the commission.

Sec. 2. The commission may acquire by purchase, gift, eminent domain, or otherwise, all property necessary, useful or convenient for its purposes.

Sec. 3. The commission shall appoint a director of conservation who, with its approval, shall appoint the assistants and other employees deemed necessary by the commission. The commission shall fix the qualifications and salaries of the director...
and all appointees and employees, and none of its members shall be an appointee or employee.

Sec. 4. The fees, moneys or funds arising from the operation and transactions of the commission and from the application and the administration of the laws and regulations pertaining to the bird, game fish, game, and wildlife resources of the State and from the sale of property used for said purposes, shall be expended and used by the commission for the control, management, restoration, conservation and regulation of the bird, game fish, game, fur, and wildlife resources of the State, including the purchase or other acquisition of property for said purposes, and for the administration of the laws pertaining thereto, and for no other purpose.

Sec. 5. The rules and regulations of the commission not relating to its organization and internal management shall become effective not less than ten days after being filed with the Secretary of State, and such final rules and regulations shall be subject to judicial review.

/s/ Maurice T. Johnson
CONSTITUTIONAL CONVENTION OF ALASKA

COMMITTEE PROPOSAL NO. 8/A

Introduced by Committee on Resources

STATE LANDS AND NATURAL RESOURCES

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution:

ARTICLE ON STATE LANDS AND NATURAL RESOURCES

1. It is the policy of the State to foster
2. and encourage settlement and development through the
3. maximum use and availability of its natural resources
4. consistent with the public interest and the avoidance
5. of waste. To that end it is the intent of this Article
6. to extend to all peoples the opportunity of partici­
7. pation in Alaska's heritage.

8. Section 1. The State of Alskaka shall consist
9. of all the territory, together with the territorial
10. waters appurtenant thereto, now included in the
11. territory of Alaska.

12. Section 2. The State of Alaska shall provide
13. for the utilization, conservation and development of
14. all of the natural resources, including land and waters
15. belonging to the State, in accordance with provisions
16. of applicable acts of Congress, including the act
17. admitting Alaska to the Union, this Constitution, and
the laws of the State, for the maximum benefit of its
people.

Section 3. Forests, fish, wildlife, grasslands
and other replenishable resources belonging to the
State shall be administered, utilized and maintained
on the sustained yield principle.

Section 4. Fish, wildlife, and waters, wherever
occurring in their natural states, are reserved to the
people for common use.

Section 5. Regulation and administration
of the commercial fisheries and of the wildlife, in­
cluding game fish, shall be delegated to a commission,
or to separate commissions, under such terms as the
legislature shall prescribe.

Section 6. Facilities, improvements and
services may be provided to assure greater utilization,
development, reclamation and settlement of lands, and
fuller utilization and development of the fisheries,
wildlife and waters.

Section 7. Laws and regulations governing
the use or disposal of natural resources shall apply
equally to all persons similarly situated with reference
to the subject matter and purpose to be served by the
law or regulation.
Section 8. Sites, objects, and areas of natural beauty or of historic, cultural, recreational or scientific interest may be acquired, preserved, and administered for the use, enjoyment and welfare of the people, under the laws of the State, and may be reserved from the State public domain.

Section 9. Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, and not used or intended exclusively for governmental purposes, constitute the State public domain.

The Legislature shall make provision for the selection and administration of lands in the State public domain.

Section 10. The Legislature may provide for the leasing of any part of the public domain, or interests therein, subject to reasonable concurrent uses. Leases shall provide, among other conditions, for payment by the party at fault for damage or injury arising from noncompliance with terms governing concurrent use, for forfeiture in the event of breach of conditions and, generally, for enforcement of terms.

Section 11. The Legislature may provide for the sale or grant of State lands or interests therein, and establish sales procedures subject to the following conditions;
All sales or grants of State land or interests therein shall contain such reservations to the State of all mineral or water resources as are required by the Congress, or the State, and shall provide for access thereto, and to all other resources reserved to the people; except that the reservation of access shall not impair the owners' beneficial use, prevent the control of trespass, nor preclude compensation for damage.

Section 12. Disposals or leases of state lands or interests therein shall be preceded by such public notice and other appropriate safeguards of the public interest as the Legislature shall prescribe.

Section 13. Discovery and appropriation shall be the basis for establishing a right in those minerals subject to location under the Federal mining laws in the year 1955 and now reserved to the State, as well as to all other metallic minerals reserved to the State. Prior discovery, location and filing shall, as prescribed by law, give prior right to such minerals and to issuance of permits, licenses, leaseholds, deeds, or patents if authorized by the Congress, and by the State, for the extraction thereof. Except as title to mineral lands shall have been conveyed by the State, continuance of such right shall depend upon performance of annual
labor, on payment of fees, rents, or royalties, or such other requirements as may be prescribed by the Legislature. Surface use of such lands, by the mineral claimant, shall be limited to those necessary to the extraction and basic processing of mineral deposits.

The Legislature shall provide for the issuance, type, and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulphur, pumice, and other minerals as may be prescribed by law.

Leases and prospecting permits giving exclusive right of exploration for specific periods and areas may be authorized for exploration conducted for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other non-metallic minerals as may be prescribed by law; and for the use of geophysical, geochemical and similar methods of prospecting for all minerals.

Section 14. All waters reserved to the people for common use shall be subject to appropriation. Priority of appropriation shall give prior right. An appropriation of water, except for public water supply, shall be limited to stated purposes and subject to preferences of beneficial uses, concurrent or otherwise, as prescribed by the Legislature, and to the general reservation of fish and wild life.
Section 15. Free access to the navigable or public waters of the State shall not be denied any resident of Alaska or citizen of the United States, except that the State may by general law regulate and limit such access for other beneficial or public purposes.

Section 16. There shall be no exclusive right or special privilege of fishery created or authorized in the natural waters of the State.

Section 17. No person shall be involuntarily divested of his right to use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial or public use and then only by operation of law.

Section 18. Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources.

Section 19. The enumeration of specified powers shall not be construed as limitations on other implied powers of the State in relation to the utilization, development and conservation of natural resources, except as specifically provided herein.
(Sec. 1 State Boundaries)

This is the same boundary statement set forth in H.R. 2535.

(Sec. 2 States' Proprietary Interest)

This section is a general grant of authority to the State for the utilization and development of all resources over which the State has a proprietary interest. This includes all game fish, wildlife, fisheries, waters and those lands and related land uses including mineral rights, etc., that may be acquired by the State through grants from the United States or by other means. Authority over private lands and resource interests is not provided in this Article except as that authority is generally reserved in Section 18.

(Sec. 3 Sustained Yield)

Sustained yield is recognized as a principle applicable to the administration of plant and animal life subject to the immediate authority of the State. This provision applies generally to wildlife and fisheries anywhere in the State and to the forests and other replenishable resources including grass which occurs on lands in the State public domain. This principle is qualified in terms of "the highest beneficial public use" in recognition of its not being in the public interest to preserve certain parasitic or predatory organisms destructive of more beneficial plant and animal life. The
reference of this section is to the State of Alaska, and not to any particular parcel of land or any particular body of water.

(Sec. 4 General Reservations)

Game fish, wildlife, fisheries, and water are recognized as belonging to the State so long as in a natural state. These resources are subject to a private right only when they have been acquired or utilized as provided by law. For example, a private person has no right to buy and sell wild animals in their natural state, but once an animal is taken in compliance with law, it becomes the property of the taker, subject to use or disposition within the law. This provision does not apply to the domestication of fur-bearing animals or other animals subject to intensive culture, to fish in private ponds, or to registered trap lines if authorized by law. The ownership of water is generally recognized as vesting in the state. Private rights can be acquired only to the use of water.

(Sec. 5 Fish and Game Management)

Management of fish and game resources, and the regulation thereof, are by this section to be the responsibility of a commission, or commissions. Composition and tenure of commissions is not mentioned, because the Committee did not wish to fix membership rigidly in the Constitution, and because the "staggered term" concept is firmly established in Alaska's Board system.

(Sec. 6 General Authorization for Facilities, Improvements and Services)

This general authorization is made to facilitate the development of the State's natural resources. In localities where lands
are susceptible to general agricultural development, the State would have authority to undertake improvements by providing roads or improvements on the land in preparation for settlement. Where improvements or facilities may be essential to the development of fisheries and water resources, the state would have the authority to undertake those developments. Such developments could require the services of technical specialists and advisors who can assist citizens of the State on technical problems involving the improvement of production and resource utilization in much the same way that the farm agent has worked on problems of agricultural production and the Forest Service has rendered aid to private owners of standing timber. The section is not, however, intended as an authorization for the State's entering business in competition with private industry.

(Sec. 7 Uniform Application)

This section is intended to exclude any especially privileged status for any person in the use of natural resources subject to disposition by the State.

(Sec. 8 Special Acquisition and Reservations)

General authority is granted the State to acquire special sites, objects or areas of scenic, historic, cultural or scientific or recreational interest, to reserve similar sites, objects or areas in the state public lands and to administer these special sites, objects, and areas for general public use. These sites, objects or areas might ultimately become state monuments or parks.
(Sec. 9 State Public Domain)

The State public domain is defined to include all lands and interests therein that are acquired by the State except for (1) lands used or intended to be used exclusively for governmental operations, and (2) those sites and areas that have been acquired or reserved for special scenic, historic, cultural, recreational, or scientific interest. The lands, and interests therein, in the State Public Domain may be disposed of in accordance with provisions of federal law, the State Constitution and State Law. Should terms of enabling legislation covering grants of lands to the State be modified before passage, the language of this section would avoid necessity of amending the Constitution.

General authority is granted to the Legislature to provide for the selection and administration of the State Public Domain. The Enabling Bill provides for State selection of granted lands. The Legislature is given general authority to provide for the general administration of the State public domain in order to assure maximum use and public benefit in the several uses of those lands.

(Sec. 10 Leases)

The Legislature is authorized to lease State lands or interests therein. In granting leases, the potential uses of the land are to be considered so that maximum benefit can be derived. Each lease shall state the particular use or uses to be made of the lands as well as the conditions of the use and the term or tenure of the lease in order to facilitate reasonable concurrent use by others if occasion arises. "Reasonableness" of concurrent uses
implies that possibilities of conflict in use should be kept to a minimum. Provisions of liability, forfeiture and other means of enforcement of the lease are to be provided in the instrument.

(Sec. 11 Sales and Grants)

Sales and grants of State lands and interests therein are generally authorized with provision for reservation of mineral rights and for reservations of access. The reservation of mineral rights is prompted by provisions of H.R. 2535, the current Enabling Bill.

Reservation of access is required on all grants or sales of state land so as to assure access to reserved mineral rights and to those resources generally reserved to the people by Section 3 of the proposal. While reserving access, the section explicitly provides that these rights of access shall not impair the owner's beneficial use, shall permit the control of trespass and allow for compensation for damages done to the owner of the land.

(Sec. 12 Public Notices and Safeguards of the Public Interest)

Certain safeguards of the public interest are essential in public land transactions. Such transactions may vary in importance from routine matters to those of substantial value. If general constitutional provisions impose too rigid requirements, the land administration can become hopelessly ensnared in red tape. As a result this section of the Constitution provides for the Legislature to establish public notice, and other safeguards to protect the public interest. As requirements change and many transactions become routine, appropriate modifications can be made in procedures if rigid requirements are not specified in the Constitution itself.
(Sec. 13 Mineral Rights)

With the restrictions on the sale, grant or patent of mineral lands as provided in the proposed Enabling Bill and in Section 9 of the proposal, this section recognizes the established pattern of mining rights whether applied to a system of leaseholds or patents. This established system of mining law recognizes the preferential right of a prospector to a mineral deposit on the basis of discovery and appropriation. Appropriation involves both location and filing. All mining law requires continued beneficial use (assessment work) to maintain a mining claim.

These elements of mining law were described by Costigan in his standard works on American Mining Law when he stated, "They (mining laws) all recognize discovery followed by appropriation, as the foundation to the possessor's title and development by working as the condition of its retention". This conception underlies the statement of mineral rights contained in Section 13.

Exceptions to these general rules applicable to mineral rights have become recognized through the Federal Mineral Leasing Act of 1920, as amended, and other special legislation for Alaska. The fuel minerals of oil, gas, oil-shale, and coal and phosphates, potash and other non-metallic minerals have been developed under a lease system which involves exclusive right to prospect certain areas over a given period of time subject to payment of certain royalties if commercial development is undertaken. This is the reason for making exceptions of these non-metallic minerals and for the newer forms of geophysical and geochemical prospecting. Otherwise the
right of an ordinary prospector to search for mineral deposits is fully recognized and he is recognized as having a preferential right to the appropriate permit, license, lease or patent if possible, for the extraction of these mineral deposits. The prospector's preferential right would presumably be transferable in the same manner that a claim can be conveyed today.

Section 13 is so phrased as to permit patenting of claims on state land should Congress remove the anticipated restrictions and the Legislature so provide. However in adapting the ideas behind the Act of July 23, 1955 to Alaskan conditions, restrictions are placed upon claims and patents so that the surface uses of the land shall be limited to those uses necessary to the extraction and basic processing of mineral deposits. The land will be available for construction of mining works, the disposition of mining wastes and for the timber necessary in mine construction. However, forests on these lands would not be generally available to the mineral claimant. The further requirement of assessment work, operation, or payments is to assure that the lands claimed for mineral purposes will revert to public control when for example, mining has ceased, the mineral deposits have been exhausted or the property abandoned.

(Sec. 14 Water Rights)

This section provides for the prior-appropriation system of water rights generally used in the western states and in Alaska. The prior appropriation system recognizes the principle of "first come; first served", or "first in time; first in right" which is also
the basic principle of mining law. Here again the concept of appropriation involves filing an application for stated quantities of water for stated uses at specific locations. The preservation of a prior appropriation right to water requires continued beneficial use. Concurrent use is recognized to assure maximum utilization. Water used for the generation of hydro-electric power, for example, is also subject to appropriation for domestic consumption or other uses that do not conflict with those for which prior appropriations have been made. Appropriations are subject to the general reservation of fish and wildlife provided in Section 3 so that reservoirs shall not exclude fish and wildlife remaining in natural states from coming under the provision of their general reservation to the people.

Preference among beneficial uses is a basic provision found in the resource codes and constitutions of several of the Western States. Orders of preference are usually made for water uses such as domestic or industrial consumption, irrigation, fisheries, mining, hydro-electric power production, etc.

The provision for divestment of right allows eminent domain proceedings to be used in permitting a higher use only. As among users of the same order of priority, the power of condemnation cannot be used. Under this type of provision the state may have granted a mining lease for placer mining in a river bed. If the stream had important hydro-electric potentialities a power company might desire to use a site, which would cause the flooding of the mine. If the hydro-electric development was determined to be a higher beneficial

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use, the mining properties might be acquired by appropriate legal action with just compensation for the interests and improvements of the conflicting mining use.

(Sec. 15 Access to Navigable Waters)

This section assures free access to the navigable waters of the state for "any person resident of Alaska or citizen of the United States." However, such access may be limited by other beneficial purposes such as the construction of dam or other water-works. Since the control of navigable waters is a Federal question within the province of Congressional authority, any actions taken by the Federal government would supersede this constitutional provision.

(Sec. 16 No Exclusive Right of Fishery)

This section is intended to serve as a substitute for the provision prohibiting the several right of fisheries in the White Act. Instead of using the terminology of that Act the purposes sought by it are given expression in a prohibition of exclusive right or special privileges of any person to the fisheries of the State.

(Sec. 17 Divestment of Rights)

This section, protecting any person from involuntary divestment of property rights and interests, is generally applicable to any established right and might be relied upon to protect persons who claim possessory rights to tidelands in coastal areas where substantial improvements have been made in docks, wharves or other waterfront facilities and homes.
This provision was borrowed from the Wyoming Constitution and modified to meet Alaskan conditions. The Wyoming provision states, "Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes, or ditches on or across the lands of others for agricultural, mining, domestic or sanitary purposes, nor in any case without due compensation." In that arid state this provision was developed to assure access to water supply even though it might be necessary for a private person to secure easement across adjoining private lands. Since the adoption of the Wyoming Constitution, a number of western states have included a similar provision in their constitutions. Since the problem of essential access in Alaska is not limited to water supply as in Wyoming, this article makes only a general provision for the use of eminent domain proceedings to provide essential access for extraction and utilization of natural resources.

The Article on State Lands and Natural Resources is primarily concerned with the State's proprietary interests in the State public lands, waters, wildlife and fisheries. This section explicitly states that the other provisions in the Article on State Lands and Natural Resources shall not limit the exercise of the general police powers of the State to provide for the utilization, development and conservation of natural resources in general, including those in private ownership.
Regulation of stream pollution, the prohibition of fish-traps and fire control in timber areas are illustrations of action taken under general public police powers to provide for public health, safety or the general welfare which may affect resource development, utilization or conservation on both public and private lands.
Constitutional Convention of Alaska

PROPOSAL NO. 9

Introduced by Victor Fischer

AN ARTICLE ON EDUCATION, HEALTH
AND WELFARE

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution.

1. **Public Education.** The State shall provide for a system of public schools which shall be open to all children of the State and may provide for other public educational institutions. They shall be free from sectarian control.

2. **Public Health.** The State shall provide for the protection and promotion of the public health.

3. **Public Welfare.** The State may provide assistance for persons unable to maintain a standard of living compatible with decency and health.

4. **Slum Clearance.** The State may provide for and assist in slum clearance, development and rehabilitation of substandard areas, and housing for persons of low income.

5. **Public Sightliness and Good Order.** The State may conserve and develop the natural beauty, objects and places of historic or cultural interest, sightliness and physical good order of the State, and for that purpose private property shall be subject to regulation.
CONSTITUTIONAL CONVENTION OF ALASKA

PROPOSAL NO. 17

INTRODUCED BY WARREN A. TAYLOR

PUBLIC WELFARE

1  Section 1. Public Education.
2  The Legislature of the State of Alaska shall provide for
3  the maintenance, operation and support of a system of free com-
4  mon schools, wherein all children of the State may be educated,
5  and of such other educational institutions, including institu-
6  tions of higher learning as may be deemed desirable.
7  Section 2. Public Health.
8  The protection and promotion of the health of the inhabit-
9  ants of the State are matters of public concern and provision
10  shall be made by the state and by such of its civil departments
11  and in such manner and by such means as the legislature shall
12  from time to time determine.
13  Section 3. Public Relief.
14  The maintenance and distribution, at reasonable rates,
15  or free of charge, of a sufficient supply of food, fuel, cloth-
16  ing and other common necessities of life, and the providing of
17  shelter, for the needy, are public functions, and the state and
its civil divisions shall provide the same for their inhabitants in such manner and by such means as may be prescribed by law.

Section 4. Inspection of Private Institutions and Agencies.

The State shall have the power to provide for the inspection by such state departments, offices or agencies, and in such manner as the legislature may determine, of all private institutions and agencies in the state, whether incorporated or not incorporated which are engaged in charitable, correctional, or health activities.

Section 5. Public Housing.

The state may provide for low rent housing for persons of low income as defined by law, or for the clearance, replanning, reconstruction and rehabilitation of substandard or unsanitary areas, or for both such purposes, and for recreational and other facilities incidental and appurtenant thereto, in such manner, by such means, and upon such terms and conditions as may be prescribed elsewhere in this constitution, or as may be prescribed by law.


The conservation, development, and utilization of the agricultural, mineral, forest, water and other natural resources of the state are public functions, and the legislature shall have the power to provide for the same and to enact legislation

PROPOSAL NO. 17
necessary, requisite and expedient therefor.

Section 7. Scenic Beauty and Historical Association.

The natural beauty, historic associations, and the physical good order of the state and its parts contribute to the general welfare and shall be conserved and developed as a part of the patrimony of the people, and to that end private property shall be subject to reasonable regulation and control.

Section 8. General Powers of the State.

The enumeration in this article of specified functions shall not be construed as a limitation upon the powers of the state government. The state government shall have full power to act for the government and good order of the state and for the health, safety, and welfare of its citizens, by all necessary and convenient means, subject to the limitations prescribed in the Constitution of the United States.
Constitutional Convention of Alaska

DELEGATE PROPOSAL NO. 18

Introduced by Truman C. Emberg and John S. Hellenthal

Natural Resources: Maximum publicity and public hearing after notice, where disposal of natural resources involved.

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution.

The Legislature shall provide that no disposal of the natural resources including lands be made, unless, after public hearing on written application therefor, and after written report and recommendations of government agency involved, and preliminary comprehensive findings and decision of said agency, and later final public hearing and decision. Notice by publication throughout Alaska shall be given of all hearings.
CONSTITUTIONAL CONVENTION OF ALASKA

DELEGATE PROPOSAL NO. 26

Introduced by M. R. Marston

DISPOSAL OF STATE LANDS TO ACHIEVE CERTAIN SOCIAL AND ECONOMICALLY BENEFICIAL PURPOSES

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution.

1. The present social and economic gains by Alaskans of Indian, Aleut, and Eskimo ancestry must to no degree be lost or abridged. As a partial means of accomplishing this purpose, the State of Alaska shall make its initial selection from lands granted by the Congress of the United States in such manner that it in turn will be able to grant immediately to the head of each household full title to two parcels of land as follows:

   (a) lands now occupied as homesites or headquarters within established communities; and
   (b) lands used seasonally as fishing, hunting, or trapping headquarters and camps.

These grants shall be made without direct or indirect cost to the grantees.

2. Alaskans of Indian, Aleut, or Eskimo ancestry shall be given every opportunity and encouragement to participate
in and benefit from the future development of the State of Alaska as full and equal partners with all other Alaskans.

As a means of providing them with a stake in this future, the State of Alaska shall by use of land script, or other simple means to be determined by the legislature, permit the head of each household to select from and acquire title to State lands not otherwise reserved, not to exceed an aggregate of one hundred and sixty acres.

3. These grants are made in the spirit of recognition of past advancement and as a token of participation in future development and are in no way to be considered as settlement in whole or part or to otherwise prejudice prior claims made by these Alaskans to hold and own lands by right of aboriginal occupancy or use.

4. To encourage the development and expansion of established communities, the State of Alaska upon application shall make grants from State lands to established communities for recreational areas, (industrial development areas) community expansion and other social and economic purposes. The legislature shall prescribe the manner in which these grants shall be made.
CONSTITUTIONAL CONVENTION
DELEGATE PROPOSAL NO. 30

Introduced by James J. Hurley

STATE LANDS AND NATURAL RESOURCES

RESOLVED, That the following be agreed upon as part of the Alaska State Constitution:

1. Section 1. Lands belonging to the State may be sold, granted or leased under such general laws as the Legislature may prescribe. Each sale or grant shall contain a reservation to the State of all minerals, oil and gas. Mineral, oil and gas deposits may be leased by the State under such general laws as the Legislature may prescribe.

2. Section 2. The State shall not sell, or lease for a period of more than 50 years, more than 2660 acres of State land to any one individual, association or corporation.

3. Section 3. All natural resources shall be utilized for the benefit of all of the people of the State. Resources which by their nature are reproduceable shall be utilized on a sustained yield basis. Resources which by their nature are not reproduceable shall be utilized so as to realize their greatest potential.

4. Section 4. No law shall be passed restricting the right of all of the people of the State to fish, hunt or trap for non-com-
commercial domestic use, except that regulations pertaining thereto
may be made in the interest of conservation or the public safety.

Section 5. The navigable waters of the State shall be open
to free use by citizens of the State or of the United States ex­
cept that the Legislature may by general law regulate such use
when the interest of the State may require.

Section 6. The Legislature shall provide for the adminis­
tration of State Lands and natural resources by one or more admin­
istrative boards, appointed in a manner that will assure represent
ation from major economic areas of the State without regard to
political affiliations.
Constitutional Convention of Alaska

DELEGATE PROPOSAL NO. 32

Introduced by R. E. Robertson

STATE LANDS AND NATURAL RESOURCES

RESOLVED, That the following be agreed upon as part of the Alaska State Constitution.

1 Section 1. Public lands, sold or leased, shall revert to the State unless utilization of the land is made within a time specified by the Legislature.
CONSTITUTIONAL CONVENTION OF ALASKA

PROPOSAL NO. 33

Introduced by Eldor Lee

ABOLITION OF FISH TRAPS

RESOLVED, that the following be agreed upon as part of the Alaska State Constitution:

1 The use of fish traps for the taking of salmon for commercial purposes is hereby prohibited in all waters of the state of Alaska.
PRESS RELEASE

ALASKA CONSTITUTIONAL CONVENTION

November 25, 1955

The Committee on Resources of the Alaska Constitutional Convention invited E. L. (Bob) Bartlett, Delegate to the United States Congress from Alaska, to attend its November 22 meeting, and to discuss with the Committee the history of resource provisions in Statehood enabling bills in Congress.

Chairman W. O. Smith explained that Senate Bill 49 and H. R. 2535, the most recent statehood bills are almost identical in their treatment of land grants to the state. Both provide that the state shall be granted approximately 103,550,000 acres of land as follows:

800,000 acres for the purpose of furthering the development of and expansion of communities.

100,000,000 acres for general support of state government.

500,000 acres for legislative, executive and judicial buildings.

200,000 acres for institutions for the mentally ill.

200,000 acres for penitentiaries.

200,000 acres for schools and asylums for the deaf, dumb and blind.

500,000 acres for normal schools.

200,000 acres for state, charitable, penal and reformatory institutions.

250,000 acres for homes for needy pioneers.

500,000 acres for the University of Alaska in addition to grants heretofore made.
All grants to the state made or confirmed under these bills would include mineral deposits. The grants of mineral lands to the state and the right to prospect and mine them would be made upon the express condition that all sales of any of the mineral lands so granted shall contain a reservation to the state of such minerals. The bills provide that any lands or minerals disposed of contrary to the Acts shall be forfeited to the U. S. by appropriate proceedings instituted by the Attorney General for that purpose in the U. S. District Court for Alaska. It should be noted that no lands would be granted to the state of Alaska for the express purpose of supporting public elementary and high schools. The 100,000,000 acre grant for general purposes of state government would presumably cover support of public schools.

Mr. Bartlett was asked about the possibility of the Senate's adhering rigidly to the Reservation concept of mineral rights as expressed in recent enabling bills.

Mr. Boswell raised the question of duality of mineral disposition procedures in the event mineral rights were reserved to the State for disposition only through lease. He expressed concern that in a competitive position with Public Domain lands, State lands would be less attractive to mineral claimants.

Mr. Bartlett stated that earlier bills did not instruct the states as to the administration of subsurface lands; that in 1950 and 1951 thinking on the Senate side commenced to change,
that S50 of the 82nd Congress contained three limitations:

1. State could not dispose of more than 640 acres to any one person, firm or association.
2. State required to observe royalty provision of not more than 12½ percent.
3. Income derived to be covered into Public School fund.

Mr. Bartlett stated further: The first committee draft of the reservation concept provided for a fixed royalty rate which was later modified to set merely an upper limit, leaving to the State legislature establishment of a royalty scale within that top limit.

In the 83rd Congress, Mr. Bartlett stated, the bill reported out by the late Senator Butler provided that grants of mineral lands be made on the express condition they contain mineral reservation in the State, and be disposed of only by lease.

The measure which passed the Senate in 1954 contained substantially similar requirements as to reservation to the state of minerals and their disposition by lease.

The current bills are substantially similar except that the prohibition against the sale of more than 640 acres to any one purchaser has been removed. In this respect the proposed Tayia project was cited.

Reference was made by Mr. Bartlett to a memorandum from Herbert J. Slaughter of the Solicitor's Office, which memorandum was made available to the Committee and traces the history of
Congressional thinking on the point of reserving minerals, in Federal grants, to the State. The bills before the last Congress differed in one respect - namely, that concerning mineral reservations in the proposed 800,000 acre grant for Community Development purposes.

Mr. Slaughter's conclusions suggest that the 1927 Act confirming title of mineral bearing school sections evidenced for the first time a change in Congressional attitude which is reflected in turn in recent statehood enabling bills.

Mr. Stewart raised the question of the taxability of leasehold interests under the proposed State lease arrangement and indicated also that certain exemptions were granted lessees of Federal Coal Lands.

Mr. White inquired "Could not the Constitution state that disposition of minerals be made by methods other than leasing, should the enabling act allow?" Mr. Bartlett replied that it could.

Questions were propounded by Delegates Ralph Rivers, Yule Kilcher, and Committee members touching on related subject matter. Mr. Rivers suggested that state lands' administration be determined by the legislature subject to terms and restrictions of the enabling law.

Delegate Kilcher's questions brought out the provision in current enabling bills whereby a limited State preference right of selection would exist on restoration to public domain of lands in Federal reservations, subject, however, to priority of
the Veteran's Preference Act of September 1944, as amended.

Mr. Bartlett's concluding references were to the effect that the latest language contained in enabling bills did not prescribe rates of royalty; that the Senate feels it is being especially liberal as to proposed acreage grants as well as to any grant of minerals; that the Congress may well feel it is committed to the course followed elsewhere since 1927 which may continue to be observed and which, therefore, accounts for the reservation language in present enabling acts.
TERMS

APPROPRIATION - mining

The term "appropriation" in mining law means the posting of notice at or near the point where the ledge is exposed; next the marking of the boundaries. (Ricketts, Am. Mining Law)

APPROPRIATION - water

An appropriation of water consists in the capture, impounding, or diversion of it from its natural course or channel and its actual application to some beneficial use private or personal to the appropriator, . . . exclusion to the extent of the water appropriated of all other persons, to constitute a valid appropriation, there must be an intent to apply the water to some beneficial use existing at the time or contemplated in the future, a diversion from the natural channel by means of a ditch or canal, or some other open physical act of taking possession of the water, and an actual application of it within reasonable time to some useful or beneficial purpose. (Black's Legal Dictionary)

Elements of valid appropriation of water are:

(1) an intent to apply it to some beneficial use, existing or contemplated,
(2) a diversion from a natural stream (or source),
(3) an application of it within a reasonable time to some useful ends. (long line of Western cases).

BENEFICIAL USE

In both water and mining law a condition of the retention of a right is continued beneficial use. Beneficial use involves
making use, continuing active utilization or work. In the laws of many states certain uses of water including the disposal of wastes and the preservation of scenic features are not recognized as beneficial uses and therefore not subject to appropriation for those purposes. Those uses that are beneficial and subject to appropriations may then be ordered in their importance so that a higher use can prevail over a lower use through eminent domain proceedings allowing for just compensation to the lower user for his rights and improvements. (V.O.)

Federal grazing permit on natural forests held to be sufficient "beneficial use" to support condemnation of defendants' land for access thereto (126 P2d 481)

Reservoir to hold water in reserve for use only if necessary held a sufficient beneficial use to defeat forfeiture through non-use and that Company could recover from U. S. for construction of the Friant Dam on San Joaquin River which cut off its reservoir source. (76 Fed Sup 836)

Summer resorts' use of a waterfall for its esthetic purposes in attracting patronage has been held a beneficial use sufficient to preclude diversion from above for purposes of generating electric power.

Cases hold irrigation and the generation of electric power to be among the many instances of the beneficial use of water. Where legal title is in one person and the right to beneficial use is in another (as in the case of a homesteader who has complied fully with requirements for patent) he is deemed the beneficial owner of the property pending issuance of patent.
CLASSIFICATION OF LANDS

Classification is characterization through the selection of some quality or feature, and therefore lands may be classified as pasture, grazing, timber, arable or mineral. It is determined by surface indications. Minerals may be hidden under any surface but a surveyor is not expected to explore for them that he may include or exclude reference to them in his reports. (8F Sup 407).

A surveyor's report that lands if cleared should be suitable for grazing, but at the time of the report were more valuable for timber, is, when accepted by the land office, a classification of the lands as non-mineral. (16 USCA 91 244 US 90.

GAME

Migratory fish in navigable waters of a state, like game within
its borders, are classified as animals ferae naturae, the title to which so far as susceptible to assertion before possession is obtained, is held by the state in its sovereign capacity, in trust for all its citizens. As an incident of the assumed ownership the state may protect the species from extinction by exhaustive measures of capture. (95 P 803)

INTEREST IN LAND

An interest in land is the legal concern of a person in the thing or property or in the right to some of the benefits or uses from which the property is inseparable. (273 Nw121)

An appropriator's right pending determination of his application to use public lands was an "interest in real property" which he could protect by suit to determine conflicting claims. (119 PQ34)

A right to take water from a well by reason of occupation of a dwelling house, and for the more convenient occupation thereof, is an interest in land. (22 WP)

Most cases hold a mortgage not to be an interest in land but mere security until foreclosure.

A conveyance of an interest in the oil, gas and minerals in and under a tract of land is a conveyance of an interest in the land. (220 SW623)

Whether such right resides in lessee or lessor, as royalty, it is an interest in land (49F (2nd) 76)

Fractional mineral rights constitute an interest in land (73 P692)

A leasehold interest constitutes an interest in land; a contract for sale of land has been held an interest in land,
as has been a written option to purchase; standing timber is
an interest in the land which the state may convey, but upon
conveyance of stumpage, to be removed at once, such stumpage
becomes personal property as distinguished from an interest in
land. An agreement to sell forest products is an interest in
land.

NATURAL WATERS

Navigable waters within the meaning of 5 Stat. 726 giving
District Courts jurisdiction over contracts and torts per­
taining to vessels navigating between different ports in
different states and ports upon the lakes and waters
connecting said lakes is not to be understood in the same
sense as natural waters but includes artificial waterways as
well. (21 Fed Cas. 851, No. 12549)

NAVIGABLE WATERS

Actually navigable in fact.

Capacity for navigation or capable of being navigated to float
boats, ships, or produce of the country.

RESERVED TO THE PEOPLE FOR COMMON USE.

Ancient traditions in property rights have never recognized
that a private right and title can be acquired by a private
person to wildlife in their natural state or to water in
general. The title remained with the sovereign, and in the
American system of government with its concept of popular
sovereignty this title is reserved to the people or the
state on behalf of the people. The expression "for common
use" implies that these resources are not to be subject
to exclusive grants or special privilege as was so frequently
the case in ancient royal tradition. Rather rights to
use are secured by the general laws of the state. In all
English and American legal systems ownership of water cannot be asserted, rights acquire only to the use of water. Once wildlife is captured and removed from their natural state possessory right accrues to the captor, provided that the wildlife was captured in conformity with provisions of law. (V.O.)

SEVERAL RIGHT

A several fishery is an exclusive right to fish which is derived from the owner of the soil. (39 W&P 89)
The right may attach as well to an arm of the sea where the tide ebbs and flows as to fresh water. (60 NY 56)
"Sole and exclusive fishery" were, after verdict, equivalent to a description of a several fishery. (3CB 426)

SUSTAINED YIELD PRINCIPLE

As to forests, timber volume, rate of growth, and acreage of timber type can be determined with some degree of accuracy. For fish, for wildlife, and for some other replenishable resources such as huckleberries, as an example, it is difficult or even impossible to measure accurately the by factors/which a calculated sustained yield could be determined. Yet the term "sustained yield principle" is used in connection with management of such resources. When so used it denotes conscious application insofar as practicable of principles of management intended to sustain the yield of the resource being managed. That broad meaning is the meaning of the term as used in the Article.

WHITE ACT PROVISION 48 U.S.C.A. 222

That every such regulation made by the Secretary shall be of general application within the particular area to which it applies, and that no exclusive or general right of fishery
shall be granted therein, nor shall any citizen of the U. S. be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary.

With respect to traps, applications for sites within areas which the Secretary finds consistent with proper conservation, should be allotted in order of priority of time in applications among qualified applicants.

The word "exclusive" forbids not only a grant to a single person or corporation, but to any special group or number of people. (Hynes-Grimes Karluck Reservation)