SUBJECT INDEX
AND
INDEX TO THE PROCEEDINGS
OF THE
ALASKA CONSTITUTIONAL CONVENTION
ON
ARTICLE VIII, NATURAL RESOURCES, AND
RELATED PROVISIONS
OF THE
CONSTITUTION OF THE STATE OF ALASKA
(November 8, 1955 - February 6, 1956)

George Utermohle
LEGAL SERVICES DIVISION
LEGISLATIVE AFFAIRS AGENCY
JUNEAU, ALASKA

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Corrections and additions to these indexes are appreciated.
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Dec. 19, 1955
Committee Proposal No. 8
Introduced by the Committee on Resources;
Referred to Rules Committee 1098
Summary; Discussion 1103-08

Jan. 5, 1956
Committee Proposal No. 8
Withdrawn; Returned to Committee
on Resources for revision 1219

Jan. 16
Committee Proposal No. 8/a
Introduced by Committee on Resources;
Referred to Rules Committee; Report
and commentary by Committee on Resources
received 2353

Jan. 17
Second Reading; Commentary by Committee
on Resources; Discussion 2449-85

Jan. 18
Consideration 2489-2601

Jan. 19
Consideration 2604-10

Jan. 25
Consideration; Referred to Enrollment
and Engrossment Committee 3051-59

Jan. 26
Report of Enrollment and Engrossment
Committee accepted; Referred to Style
and Drafting Committee 3253-54

Jan. 30
Report of Style and Drafting Committee
received; Consideration; Referred to
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SECTION 1. STATEMENT OF POLICY

Introduced as preamble to Committee Proposal 8/a 2353
Commentary by Committee on Resources 2451
Discussion 2457-58
Amendment proposed by Committee on Resources, adopted 2489
Amended and renumbered as Section 1 by Style and Drafting Committee 3631

SECTION 2. GENERAL AUTHORITY

Introduced as Section 2 of Committee Proposal 8/a 2353
(See COMMENTARY, page 98)
Commentary by Committee on Resources 2451
Amendment proposed, adopted 2499-2500
Amendment proposed, deferred 2564-65
Amendment proposed by Committee on Resources, adopted 2592
Amendment proposed, failed 2595-97
Amendment proposed, failed 2597-2600
Amendment proposed by Committee on Resources, adopted 3053-54
Amended by Style and Drafting Committee 3631

SECTION 3. COMMON USE

Introduced as Section 4 of Committee Proposal 8/a 2353
(See COMMENTARY, page 98)
Commentary by Committee on Resources 2451
SECTION 4. SUSTAINED YIELD

Introduced as Section 3 of Committee Proposal 8/a 2353
(See COMMENTARY, page 98)

Commentary by Committee on Resources 2451
Discussion 2456-57
Discussion 2522-23

Amendment proposed by Committee on Resources, adopted 3054-55

Renumbered as Section 4 by Style and Drafting Committee 3631

Amendment proposed by Committee on Resources, adopted 3704-05

SECTION 5. FACILITIES AND IMPROVEMENTS

Introduced as Section 6 of Committee Proposal 8/a 2353
(See COMMENTARY, page 99)

Commentary by Committee on Resources 2451
Discussion 2466-67
Renumbered as Section 5 2522
Discussion 2523
SECTION 6. STATE PUBLIC DOMAIN

Introduced as Section 9 of Committee Proposal 8/a (See COMMENTARY, pages 99-100) 2353
Commentary by Committee on Resources 2452
Discussion 2469
Renumbered as Section 8 2522
Discussion 2523-25
Amendment proposed by Committee on Resources, adopted 2593
Discussion 3058-59
Amended and renumbered as Section 6 by Style and Drafting Committee 3631

SECTION 7. SPECIAL PURPOSE SITES

Introduced as Section 8 of Committee Proposal 8/a (See COMMENTARY, page 99) 2353
Commentary by Committee on Resources 2452
Discussion 2468-69
Renumbered as Section 7 2522
Discussion 3632

SECTION 8. LEASES

Introduced as Section 10 of Committee Proposal 8/a (See COMMENTARY, page 100) 2353
Commentary by Committee on Resources 2452
Renumbered as Section 9 2522
Discussion 2524-25
Amendment proposed by Committee on Resources, adopted 2609-10
Amended and renumbered as Section 8 by Style and Drafting Committee 3632

Discussion 3645-46

Amendment proposed by Committee on Resources, adopted 3705

SECTION 9. SALES AND GRANTS

Introduced as Section 11 of Committee Proposal 8/a 2353
(See COMMENTARY, page 100)

Commentary by Committee on Resources 2452

Discussion 2470-71

Amendment proposed by Committee on Resources, adopted 2493-94

Amendment proposed by Committee on Resources, adopted 2494

Renumbered as Section 10 2522

Discussion 2525-27

Amendment proposed by the Committee on Resources, adopted 3056

Renumbered as Section 9 by the Style and Drafting Committee 3632

Amendment proposed by the Committee on Resources, adopted 3647-48

SECTION 10. PUBLIC NOTICE

Introduced as Section 12 of Committee Proposal 8/a 2353
(See COMMENTARY, page 100)

Commentary by Committee on Resources 2452

Discussion 2469-70

Renumbered as Section 11 2522
Renumbered as Section 10 by Style and Drafting Committee

SECTION 11. MINERAL RIGHTS

Introduced as part of Section 13 of Committee Proposal 8/a
(See COMMENTARY, page 101)

Commentary by Committee on Resources

Discussion

Amendment proposed by Committee on Resources, adopted

Renumbered as part of Section 12

Amendment proposed by Committee on Resources, adopted

Amendment proposed by Committee on Resources, adopted

Amended and renumbered, in part, as Section 11 by Style and Drafting committee

Discussion

Amendment proposed, adopted

Amendment proposed, withdrawn

Amendment proposed, withdrawn

Amendment proposed, adopted

Amendment proposed, adopted

Amendment proposed by Committee on Resources, adopted

Amendment proposed by Committee on Resources, adopted

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SECTION 12. MINERAL LEASES AND PERMITS

Introduced as part of Section 13 of Committee Proposal 8/a 2353
(See COMMENTARY, page 101)

Commentary by Committee on Resources 2452

Discussion 2471-76

Amendment proposed by Committee on Resources, adopted 2495-98

Renumbered as part of Section 12 2522-23

Amendment proposed by Committee on Resources, adopted 2547-50

Amendment proposed, deferred 2550-52

(See 2593)

Amendment proposed, failed 2553-56

Amendment proposed by Committee on Resources, adopted 2593

Amendment proposed, withdrawn 2604-09

Amendment proposed by Committee on Resources, adopted 2609-10

Amended by Style and Drafting Committee, part of material was transferred to Section 11 3632-33

Discussion 3633

SECTION 13. WATER RIGHTS

Introduced as Section 14 of Committee Proposal 8/a 2353
(See COMMENTARY, page 102)

Commentary by Committee on Resources 2452-53

Discussion 2476-77
SECTION 14. ACCESS TO NAVIGABLE WATERS

Introduced as Section 15 of Committee Proposal 8/a 2353
(See COMMENTARY, page 102)

Commentary by Committee on Resources 2453
Discussion 2478

Renumbered as Section 14 2522

Amendment proposed, adopted 3055-56
Discussion 3633

Amendment proposed, adopted 3639-44

SECTION 15. NO EXCLUSIVE RIGHT OF FISHERY

Introduced as Section 16 of Committee Proposal 8/a 2353
(See COMMENTARY, page 102)

Commentary by Committee on Resources 2453
Discussion 2478

Renumbered as Section 15 2522
SECTION 16. PROTECTION OF RIGHTS

Introduced as Section 17 of Committee Proposal 8/a
(See COMMENTARY, page 103)

Commentary by Committee on Resources

Discussion

Renumbered as Section 16

Amendment proposed, withdrawn

Amendment proposed, adopted

Discussion

SECTION 17. UNIFORM APPLICATION

Introduced as Section 7 of Committee Proposal 8/a
(See COMMENTARY, page 99)

Commentary by Committee on Resources

Discussion

Renumbered as Section 6

Renumbered as Section 17 by Style and Drafting Committee

SECTION 18. PRIVATE WAYS OF NECESSITY

Introduced as Section 18 of Committee Proposal 8/a
(See COMMENTARY, page 103)

Commentary by Committee on Resources

Discussion

Renumbered as Section 17

Amendment proposed, adopted

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Renumbered as Section 18 by Style and Drafting Committee

Amendment proposed by the Committee on Resources, adopted
III. HISTORY OF SECTIONS DELETED FROM COMMITTEE PROPOSAL 8/a

1. STATE BOUNDARY

Introduced as Section 1 of Committee Proposal 8/a 2353
(See COMMENTARY, page 98)

Commentary by Committee on Resources 2451

Amendment proposed by Committee on Resources, adopted 3051-53

Renumbered as Section 20 by Style and Drafting Committee 3634

Transferred to Article XII as Section 1 by Style and Drafting Committee 3854

2. FISH AND GAME MANAGEMENT

Introduced as Section 5 of Committee Proposal 8/a 2353
(See COMMENTARY, page 99)

Commentary by Committee on Resources 2452

Discussion 2502-22

Amendment proposed, withdrawn 2502-04

Amendment proposed, withdrawn 2503-04

Amendment proposed to delete Section 5, adopted 2504-20

Related amendment proposed, failed 2520-22

Related amendment proposed, failed 3711-12

3. RESIDUAL POWERS

Introduced as Section 19 of Committee Proposal 8/a 2353
(See COMMENTARY, page 103)

Commentary by Committee on Resources 2453

Renumbered as Section 18 2522
Renumbered as Section 19 by Style and Drafting Committee

Discussion

Deleted by Style and Drafting Committee
IV. HISTORY OF OTHER PROVISIONS RELATED TO NATURAL RESOURCES

1. NATIVE LAND CLAIMS

New section proposed for addition to Article VIII, failed 2525-47
2567-91
2600-01

Resolution adopted by convention 3920-22

2. DISCLAIMER OF RIGHTS IN PROPERTY AND RIGHTS OF ALASKAN NATIVES

Introduced as Section 23 of Committee Proposal 5 1564

Deleted from Committee Proposal 5; Referred to Committee on Ordinances and Transitional Measures 1778-82

Introduced as Section 1 of Committee Proposal 16 2834

Second Reading 2927

Amendment Proposed by Committee on Ordinances and Transitional Measures; adopted 2927-34

Discussion 3077-81

Amendment proposed, failed 3078-81

Referred to Committee on Enrollment and Engrossment 3081

Renumbered as Section 14 of Article XII by Style and Drafting Committee 3777

Discussion 3777-78

Amendment proposed, adopted 3778-79

Report of Style and Drafting Committee adopted 3779-80

Third reading; adopted 3814-18

Renumbered as Section 12 of Article XII by Style and Drafting Committee 3854
Report of Style and Drafting Committee, adopted 3910
Constitution of State of Alaska, adopted 3938-39

3. ORDINANCE 3. ABOLITION OF FISH TRAPS

Discussion 2478-83 2499

Introduced as Sections 20 and 21 of Committee Proposal 17/a by Committee on Ordinances and Transitional Measures 3013-14

Discussion 3035-41

Amendment proposed by Committee on Ordinances and Transitional Measures, adopted; Sections renumbered as 25 and 24, respectively 3205-17

Consideration; Numerous amendments proposed, most amendments adopted 3217-51

Consideration; Numerous amendments proposed, some amendments adopted 3556-91

Adopted by Convention 3772

Sections 24 and 25 renumbered as sections 1 and 2 of Ordinance 3 3845-50
SOURCES


Commentary on Article on State Lands and Natural Resources, dated January 16, 1956 (COMMENTARY), In PROCEEDINGS Part 6, Appendix V, pages 98 - 103.


TERMS, prepared by Committee on Resources, Alaska Constitutional Convention, undated, 7 pages, on file Legislative Reference Library, Legislative Affairs Agency, Juneau, Alaska.
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 303)

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 (49P (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 pertaining 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 N.Y. 56)
"Sole and exclusive fishery" were, after verdict, equivalent to a description of a several fishery. (3 Que. B 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 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 Kârluck Reservation)