Senate Resource Committee Presentation
By Robin O. Brena and Craig W. Richards

February 6 – February 8, 2012

Introduction

Decision Following Trial De Novo, Case No. 3AN-06-8446 CI
(2007-2009 Tax Years Consolidated) Assessed Valuations of the Trans Alaska Pipeline System (December 30, 2011)
("Gleason Decision")

Robin O. Brena—Counsel for the Fairbanks North Star Borough and Lead Counsel for the Municipalities in the 2007-09 Assessed Valuations Case for TAPS

Craig W. Richards—Counsel for the City of Valdez and Co-Counsel for the Municipalities in the 2007-09 Assessed Valuations Case for TAPS

Mr. Brena and Mr. Richards are testifying as to their own personal opinions as Alaskan residents and are not representing any client or being paid for their testimony.

Introduction
Robin O. Brena

Mr. Brena is a life-long Alaskan who grew up in Skagway. He has received a Masters of Business Administration ("MBA") and a Doctor of Jurisprudence ("JD") from the Willamette University and a Master of Laws in Real Property ("LL.M.") from the University of Miami. He has been the Chairman of the Real Estate Section of the Alaska Bar Association, Chairman of the Estate Planning and Probate Section of the Alaska Bar Association, and has taught Advanced Business Law at the University of Alaska.

Mr. Brena is the owner of Brena, Bell & Clarkson, P.C., an Anchorage law firm that emphasizes oil and gas, public utilities, tax assessment, real estate, commercial, regulatory, and telecommunications law. Representative current and prior clients in the oil and gas and tax assessment areas of practice are Fairbanks North Star Borough; Anadarko Petroleum Corp.; City of Valdez; Tesoro Corporation; Aurora Gas, LLC; Aurora Power Resources, Inc.; Murphy Exploration (Alaska) Inc.; Cook Inlet Energy, LLC; Agrium Inc.; Nabors Alaska Drilling, Inc.; Doyon Drilling, Inc.; Doyon Parker Joint Venture; Nordic-Calista Services No. 1; and Parker Drilling, Inc.

Mr. Brena has been involved in several major tax assessment cases in Alaska involving drilling rigs, an oil refinery, tankers, and pipelines. He has also been involved in the many of the major pipeline regulatory cases before the Federal Energy Regulatory Commission ("FERC"), the Regulatory Commission of Alaska ("RCA"), and the Washington Utilities and Transportation Commission ("WUTC") involving the Trans-Alaska Pipeline System ("TAPS"), Cook Inlet Pipeline System ("CIPL"), Cook Inlet Gas Gathering System ("CIGGS"), Kenai Pipeline Company ("KPL"), Olympic Pipeline, and Enstar.

Mr. Brena represented the Fairbanks North Star Borough and was the lead counsel for the Municipalities before the Honorable Judge Gleason in the ad valorem case concerning TAPS for the 2007-09 tax years.

Introduction
Craig W. Richards

Mr. Richards grew up in Fairbanks, Alaska, where he graduated from West Valley High School in 1993. He studied finance as an undergraduate at the University of Virginia, and holds a *Juris Doctor* from Washington & Lee University and a MBA from Duke University.

Mr. Richards practices law with Bill Walker and Joe Levesque at Walker & Levesque, LLC in Anchorage, Alaska. His practice focuses on finance, tax, municipal, and oil and gas law. Mr. Richards has been involved with numerous oil and gas taxation disputes, including those relating to TAPS and the tankers that call at Valdez. Through his representation of the Alaska Gasline Port Authority, as well as other clients, he has spent many years working on an LNG project to Valdez. He has also been actively involved in the proposal to truck North Slope gas to interior Alaska, and the proceedings related to the termination of the Point Thomson Unit. The firm also acts as bond counsel on TAPS' refinancings.

Mr. Richards, along with Mr. Walker, represented the City of Valdez before the Honorable Sharon Gleason in the recent de novo trial relating to the 2007 – 2009 assessed value of TAPS.

Introduction

1. This is a consolidated appeal of the State Assessment Review Board ("SARB" or "Board") Decisions of the 2007, 2008, and 2009 assessments of the Trans Alaska Pipeline System ("TAPS") for ad valorem tax purposes under AS 43.56. SARB assessed the value of TAPS for 2007 at $4.588895312 billion, for 2008 at $6.154447972 billion, and for 2009 at $9.045892 billion.

Gleason Decision ¶ 1

Introduction

599. [F]or the reasons expressed herein, this Court finds that as of January 1, 2007, 2008, and 2009, the "full and true value" of the Trans Alaska Pipeline System, "with due regard to the economic value of the property based on the estimated life of the proven reserves of gas or unrefined oil then technically, economically, and legally deliverable into the transportation facility" is $8.941 billion for 2007, $9.644 billion for 2008, and $9.249 billion for 2009.

Gleason Decision ¶ 599

Introduction

Source Materials

2007-2009 Decision:

http://akdemocrats.org/rep_gara/2012/01/05/sen-french-bp-withholds-oil-pipeline-evidence-credibility-in-oil-tax-debate-questioned/

2006 Amended Decision:

http://aws.state.ak.us/officeofadminhearings/Documents/TAX/TAX06SARB%20Amended%20Sup%20Ct%20decision.pdf

Overview

- Introduction
- Overview
- Market Structure
  - Integrated Operations with Concentrated Market Power
  - Stages of Development
  - Barriers to Competitive Entry
- The Life of TAPS
  - Price of ANS Crude Oil
  - Reserves and Throughput
  - Minimum Mechanical Throughput
- Access to Information
- Conclusion

Overview

546. Brent Eyre, on behalf of the Municipalities, employed a discounted cash flow income approach to value the integrated economic unit of which TAPS is a part at $40.2 billion in 2007, $44.2 billion in 2008, and $50.4 billion in 2009. Dr. James Smith, on behalf of the Owners, testified that Mr. Eyre's unit value of the integrated ANS enterprise should be reduced by slightly less than 10% for each year, for a value of $36.4 billion in 2007, $41.1 billion in 2008, and $46.0 billion in 2009.

Gleason Decision ¶ 546

Overview

Integrated Value of the ANS Unit

	Comparison of Valuation Results, Before and After Corrections (all values in $ billions)			
		Jan 1, 2007	Jan 1, 2008	Jan 1, 2009
	Results Reported by Mr. Eyre			
Eyre	System	$40.159	$44.208	$50.439
	TAPS	$8.812	$9.611	$10.688
	Results Obtained from Corrected Model			
Smith	System	$36.401	$41.079	$46.000
	TAPS	$0.259	$0.645	$2.555

TO-07-433 (Dr. Smith Chart)

Market Structure

Integrated Operations with Market Power

Concentrated Market Power Integrated Value of the Unit

- **Shows ANS unit will generate roughly $36 - $50 billion in discounted cash flow value**
- **Current Value of Parts of the Unit Substantially Less than $36 - $50 billion**
  - Taxable upstream assets, most valued on RCNLD, assessed at between $8-$10 billion for 2007 to 2009 [2007-2009 Trial Tr. 13040 (Greeley)]
  - Even under Dr. Smith's calculations, a $13 billion TAPS value leaves between $13 billion and $26 billion in unallocated unit value for non-taxable property
    - Includes intangibles (if any), leases, certain locally assessed property, etc. [*See* AS 43.56.020; AS 43.56210(5)(B)]
- **Unit Income is Sufficient to Justify:**
  - Billions in capital investment above the over $2 billion annual capital investment already anticipated in the integrated model
  - Replacing TAPS at $20+ billion
  - A $13+ billion TAPS value

Market Structure
Overview

- Integrated Operations with Market Power
- Stages of Development
- Barriers to Competitive Entry

Market Structure

Integrated Operations with Market Power

- Integrated Operations
- Market (ANS Basin) Dominance by Big 3
- Limited Competition

Market Structure

Integrated Operations with Market Power

69. The TAPS Owners did not and could not have independently financed the original construction of TAPS and they do not independently finance substantial improvements to TAPS. Instead, the affiliated production companies have financed TAPS' construction. And the evidence at trial demonstrated that all significant funding decisions for TAPS are not made by the TAPS Owners, but by the affiliated parent corporations or upstream producer affiliates of each Owner.

Gleason Decision ¶ 69

Market Structure

Integrated Operations with Market Power

70. As of the lien dates, the parent companies of the three largest owners of TAPS (BP, ConocoPhillips, and ExxonMobil) had a combined 95% ownership interest in TAPS. These same three parent companies also had a combined total in excess of 96% of the estimated production on the North Slope. This close correlation between estimated production and ownership interest in TAPS is expected to remain in place for the foreseeable future. . . . [E]ach of the five TAPS Owners has an affiliate with oil to be transported on TAPS.

Gleason Decision ¶ 70

Market Structure

Integrated Operations with Market Power

71. Each Owner's affiliated producer has an economic incentive to nominate its ANS production to its affiliated TAPS Owner. As explained by Charles Coulson, the President of BP Pipelines:

> There has been a strong pattern of shippers on TAPS nominating their barrels to affiliated pipeline companies. There are a variety of reasons for this behavior, but mostly it can be understood by thinking about integrated corporate economics. When an upstream affiliate ships barrels in its pipeline affiliate's space, it pays the published tariff rate to the pipeline affiliate, and no money leaves the corporate family.

Gleason Decision ¶ 71

Market Structure

Integrated Operations with Market Power

114. In the case of TAPS, AS 43.56.060(e)(2)'s reference to "economic value" and not "market value" is consistent with the reality that there is no market for TAPS as a standalone investment based solely on its tariff income. Even if there might be a buyer of TAPS based solely on its tariff income, the evidence at the trial de novo conclusively demonstrated that a TAPS Owner would not sell its interest in TAPS without the assurance that its affiliated oil from the Alaska North Slope could be shipped to market. . . .

Gleason Decision ¶ 114

Market Structure

Integrated Operations with Market Power

124. [F]or the evidence persuasively demonstrates that ANS producers would rebuild TAPS at a cost of billions of dollars to transport ANS petroleum products to market if TAPS was not in existence as of the lien dates. And the producers would replace TAPS not for the tariff income they might realize, but to monetize the approximately 7 to 8 billion barrels of proven reserves that were at the ANS as of the lien dates.

Gleason Decision ¶ 124

Market Structure

Integrated Operations with Market Power

549. As in the 2006 tax year litigation, the Court finds again that tariff income is not the primary driver of the economic value of TAPS under AS 43.56. As SARB has held, and as this Court has previously discussed in these findings, TAPS was not built or operated for tariff income, but to monetize the vast ANS reserves of the producer oil companies by bringing those reserves to market. In this regard Mr. Coulson, the President of BP Pipelines (Alaska) Inc. and the Chairman of the Owners' Committee for TAPS at the time, testified as follows:

Q: It's fair to say that TAPS was built by the producers?

THE WITNESS: Yes.

Q. And it's fair to say that TAPS was built - that the economic driver was the integrated economics of bringing the Alaska North Slope oil to market?

THE WITNESS: As I understand the history of TAPS, and indeed of most basin-opening developments, it's usually the resource owner that has to make the infrastructure development happen because of the risks associated with an undertaking like that.

Q. And the reason that the resource owner takes those risks is in order to monetize the resource and bring it to market, correct?

THE WITNESS: Yes.

Gleason Decision ¶ 549

Market Structure

Integrated Operations with Market Power

551. [T]he Owners' reliance upon the tariff income approach fails to recognize that TAPS was built, is operated, and would be replaced at an estimated cost of approximately $19 billion if it were not in existence, not because of a desire to realize tariff income, but because of the overwhelming economic value arising from its highly integrated use for transporting ANS production to market.

Gleason Decision ¶ 551

Market Structure

Integration – North Dakota

Testimony of Mr. Barry E. Sullivan (Munis' witness)

Q. And do you have a … comparative sense between the TAPS system and other systems with regard to access for that independent shipper?

A. [I]n North Dakota, there's a new field called the Bakken field and it's … a fairly hot area of exploration and development.

There's Enbridge Pipeline in the Bakken that has about 180 different shippers, and there are numerous marketers operating within that area that will buy and sell oil for you….

That contrasts with the situation on the North Slope where … the producers themselves, the Big 3, do not sell oil at the North Slope and you can't buy oil at Pump Station 1 and transport it on TAPS. The policy of the Big 3 is to sell delivered oil in delivery markets.

Tesoro is the only shipper that's been able to buy North Slope oil and ship it on the TAPS system. So I think there's a big contrast between the way that the North Slope market works and other producing regions in North America.

2007-2009 Trial Tr. 8562-63

Market Structure
Integration – Gulf of Mexico

Testimony of Mr. Barry Sullivan (Munis' witness)

[I]f you compared what's happened in the North Slope of Alaska to the offshore Gulf of Mexico, which … began, real exploration, probably back in the 1960s… you could look at the Gulf of Mexico today and it is an extremely competitive and well-explored area with numerous production companies and probably hundreds of different owners and producers that contrasts dramatically with what's happened in the North Slope.

And you don't have the level of competition on the North Slope that should be there after 35 years.

And I believe part of that is the vertical -- part of that can be caused by the vertical integration of the TAPS Carriers and their ownership of TAPS.

2007-2009 Trial Tr. 8556-58

Market Structure

Integrated Operations with Market Power

Testimony of Mr. Michael J. Remsha (Owners' witness)

Q. Okay. It is very simple. Let me go back to my hypothetical. Do you believe that the TAPS Owners would sell me TAPS for $20 billion for the expressed purpose of shutting it down?

A. Most likely not.

Q. Why not?

A. Because they want to be able to have the opportunity to take oil from the North Slope and bring it to market.

2007-2009 Trial Tr. 692

Market Structure
Stages of Development

- Role of Majors / Role of Independents
- ANS Oil Development
- ANS Gas Development
- Cook Inlet Development
  - Open Infrastructure (Agrium)
  - Limited Open Market (Enstar & Export)
  - Tax Policy

Market Structure
Barriers to Competitive Entry

- Access to Field Facilities
  - ARCO Merger Partial Opportunity
  - Telecommunications Industry Example
- Transportation by Common Carrier Pipelines
  - History of TAPS Rates
  - Tariff Provisions
    - Restrictions on New Shippers
    - Tankage Penalties
- Transportation by Tankers

Market Structure

Barriers to Competitive Entry

561. Historically, regulatory disputes concerning TAPS' tariff rates have most often been resolved by settlement among the parties rather than by a substantive determination by FERC or the RCA. The settlement that has governed TAPS' tariff rates for the majority of the time it has been in service has been the TAPS Settlement Agreement ("TSA"). The TSA contained a complex and unique rate methodology referred to as the TSM. Both the State and the TAPS Owners supported the TSA. An Explanatory Statement by the State of Alaska and the Department of Justice in support of the settlement stated, "Alaska and DOJ believe that as a settlement, the tariff stream produced by the TSM is a fair and reasonable attempt to achieve a tariff profile that will encourage economically efficient exploration of North Slope petroleum resources."

Gleason Decision ¶ 561

Market Structure

Barriers to Competitive Entry

562. The RCA found that under the TSM, between 1977 and 1996, the TAPS Owners collected, in 1997 dollars, $13.5 billion more than would have been collected under the current rate methodology used by the RCA to set rates on TAPS. Nevertheless, the TSM was approved by FERC.

Gleason Decision ¶ 562

Market Structure

Barriers to Competitive Entry

TAPS Settlement Methodology (TSM)

RCA Order 151:

http://rca.alaska.gov/RCAWeb/ViewFile.aspx?id=03D92432-C32B-4C77-A47A-5705B899FC10

FERC Opinion 502:

http://www.ferc.gov/whats-new/comm-meet/2008/061908/G-1.pdf

Market Structure
Source Materials

- Cicchetti Report (MUN7-0001)
- Sullivan Report (MUN7-0008)
- BP Tariff Memo (MUN7-0001 at 2455)

The Life of TAPS
Overview

- Price of ANS Crude Oil
- Reserves and Throughput
- Minimum Throughput

The Life of TAPS
Price of ANS Crude Oil

- Price Increases / Throughput Declines
- Value of Reserves / Engineering Solutions
- EIA Forecasts
- Real Price Growth

The Life of TAPS
Price of ANS Crude Oil

The EIA Price Forecasts Support Increasing Per Unit Throughput Value

- The Energy Information Administration (EIA) collects and publishes historic information and makes short- and long-term price forecasts
- Price Trends are up with increasing world demand.
- Since adopting NEMS in 1994, virtually all the future reference price forecasts post 1999 have underestimated actual crude prices
- Turning points follow crises, spare capacity, and worldwide demand/supply

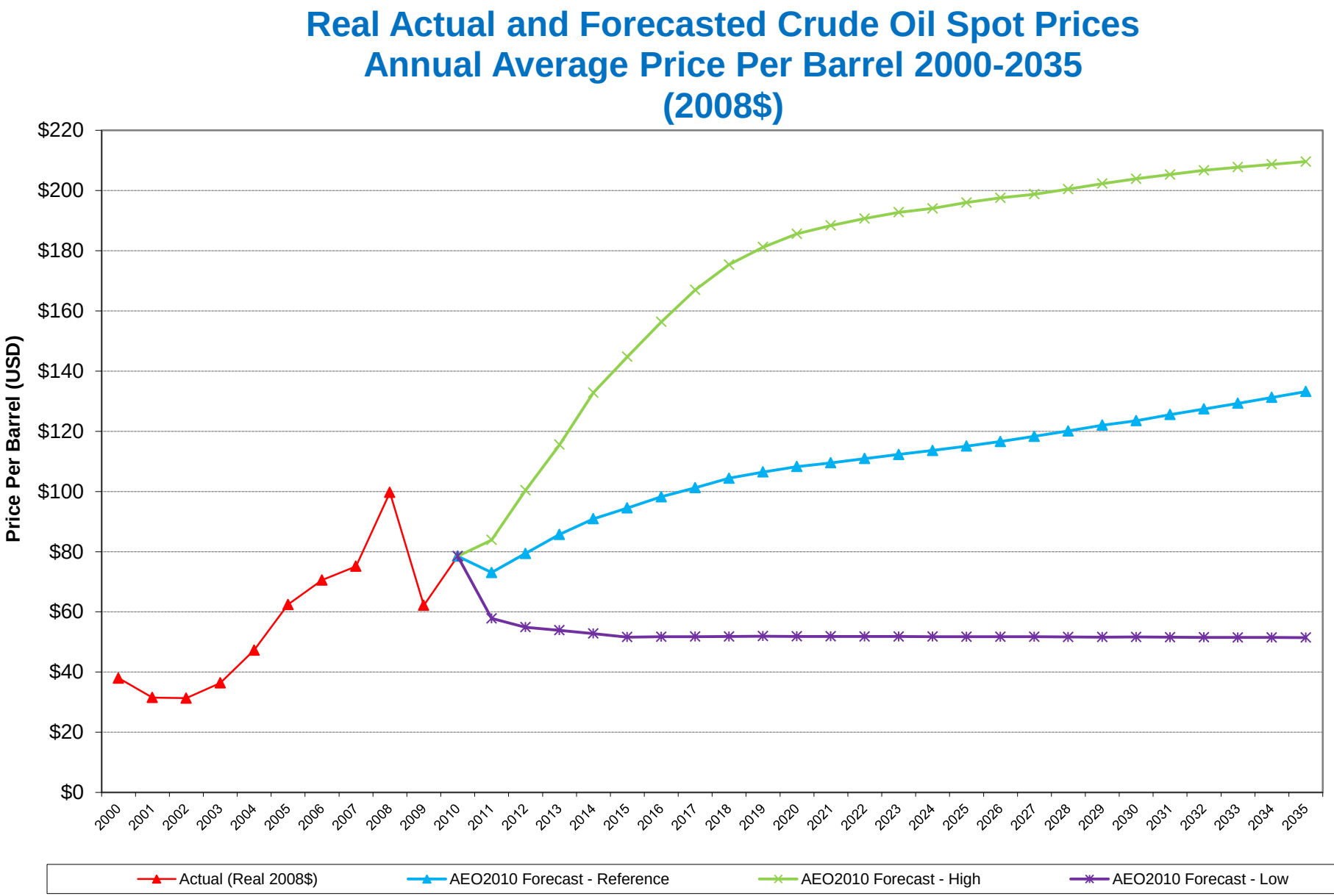
The Life of TAPS
Price of ANS Crude Oil

480. Mr. Platt relied upon the U.S. Department of Energy's Energy Information Administration ("EIA") price forecast, which forecasted real market price growth for each of the three assessment years at approximately 1% per annum. Based on the evidence presented at trial, this Court finds that reliance on that forecast was reasonable. Oil prices during the three assessment years were volatile, such that the forward-looking projections made by the EIA during that period varied considerably. Yet the highest oil price forecasted by the EIA for calendar year 2011 during the assessment years was $74.08 per barrel, while the actual price of oil on October 18, 2011 was $113 per barrel. Mr. Platt also explained that due to the highly progressive nature of Alaska's production tax, oilfield economics at high real oil prices are not materially affected by price variations. Overall, this Court found Mr. Platt's production forecast and economic testing to be persuasive.

Gleason Decision ¶ 480

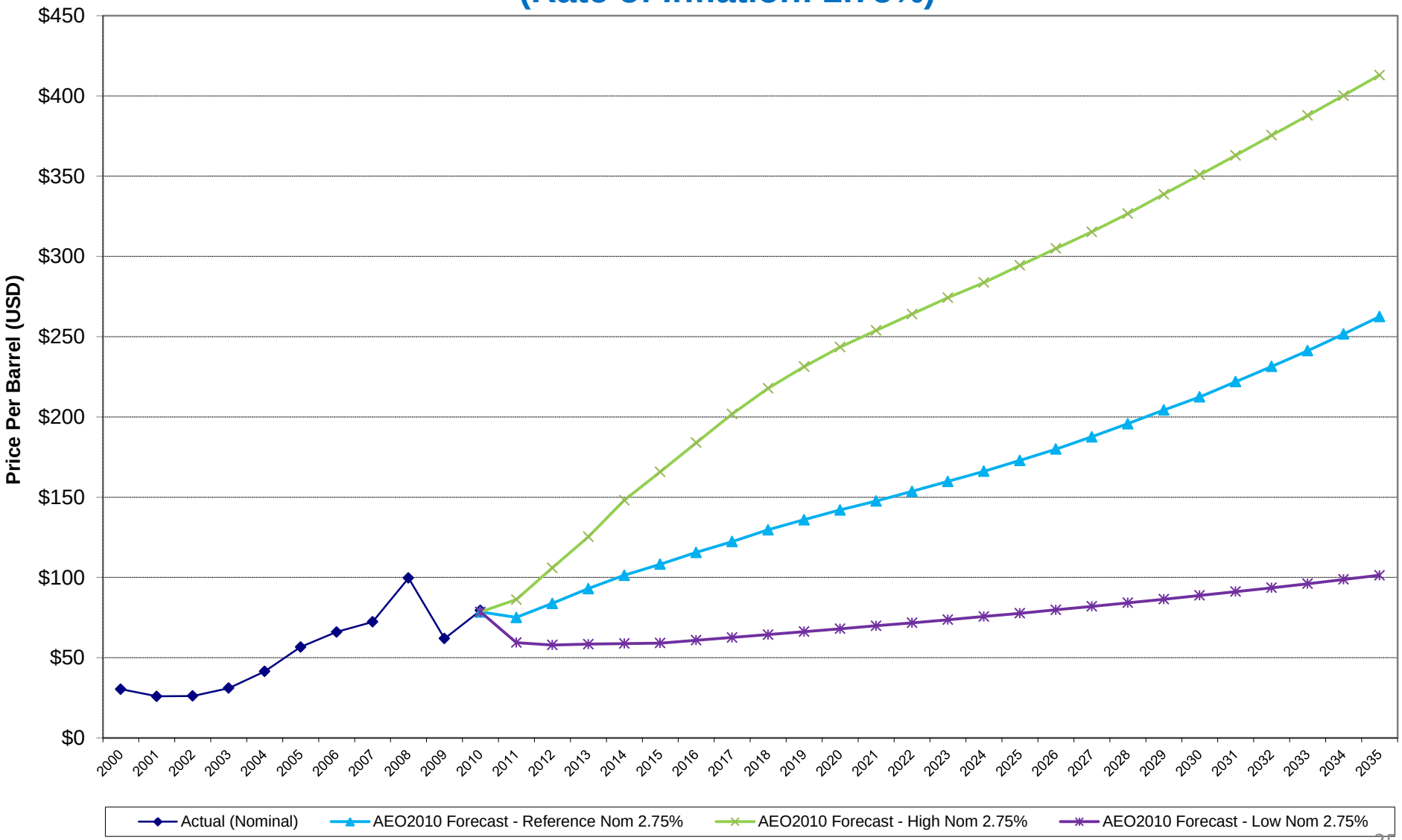
The Life of TAPS

Price of ANS Crude Oil



The Life of TAPS, Price of ANS Crude Oil

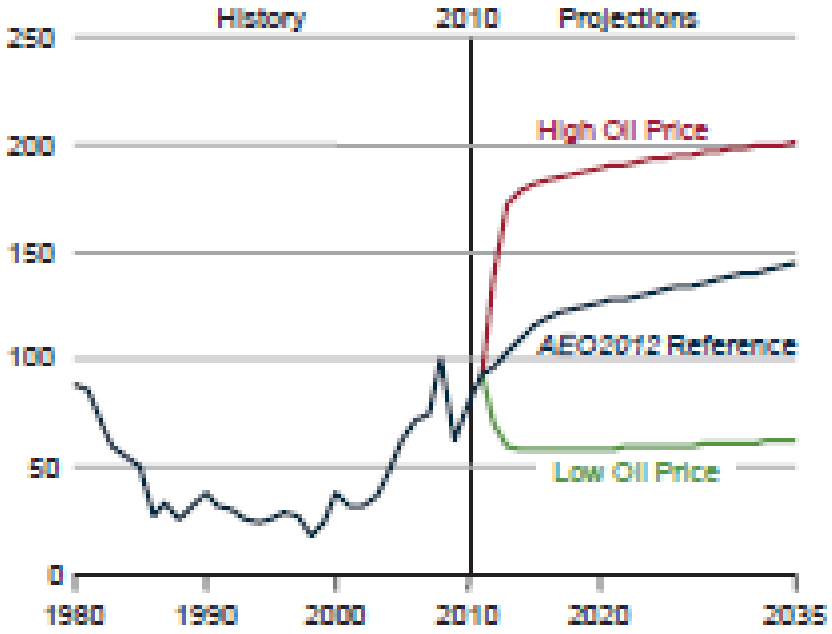
Nominal Actual and Forecasted Crude Oil Spot Prices
Annual Average Price Per Barrel 2000-2035
(Rate of Inflation: 2.75%)



The Life of TAPS
Price of ANS Crude Oil
EIA Price Forecast

Prices for crude oil in 2011 remained generally in a range between $85 and $110 per barrel. In 2011, WTI prices were lower than Brent prices because of pipeline capacity constraints that prevented complete arbitrage between WTI and Brent prices. Real imported sweet crude oil prices (2010 dollars) in the AEO2012 Reference case rise to $120 per barrel in 2016 (Figure 5) as pipeline capacity from Cushing, Oklahoma, to the Gulf Coast increases, the world economy recovers, and global demand grows more rapidly than the available supplies of liquids from producers outside the Organization of the Petroleum Exporting Countries (OPEC). In 2035, the average real price of crude oil in the Reference case is about $145 per barrel in 2010 dollars, or about $230 per barrel in nominal dollars.

Figure 5. Average annual world oil prices in three cases, 1980-2035 (real 2010 dollars per barrel)



http://www.eia.gov/forecasts/aeo/er/pdf/0383er(2012).pdf

The Life of TAPS
Reserves and Throughput

- Judge Gleason's Decision as to the Life of TAPS is Based on a Limited Definition of Proved Reserves Only and Does Not Consider Probably, Possible, or Speculative Categories
- Proven Reserves Were 9.6 Billion Barrels (1977) and are 7-7.8 Billion Barrels (2007-09) / Approximately 16 Billion Barrels Produced
- Value of Reserves Has Increased Substantially / Life Linked to Value (Increase of $10 Barrel = 5.5 Years for TAPS)
- Internal Information / Financial Information Support Longer Life for TAPS

The Life of TAPS
Reserves and Throughput

In August 2007, DOE and the National Energy Technology Laboratory (NETL) Reported "Economically Recoverable" Reserves at High Prices and With Natural Gas Development*

	(2005-2050) Billion Barrels
Total	35-36
Without ANWR 1002	29.5
Without ANWR 1002 and Chukchi Sea	19.5
Without ANWR 1002, Chukchi Sea and Beaufort Sea	15.5
Without ANWR 1002, Chukchi Sea, Beaufort Sea, and No Natural Gas Development	9.5

***The DOE/NETL issued an Addendum to this Report in April 2009 with the same estimates.**

MUN7-9205 at 8

The Life of TAPS

Reserves and Throughput

Value of Remaining Crude for the Next 25 Years Will Exceed Current Cumulative Value of Oil Shipped

	Cumulative Value of TAPS Through 2010
Barrels	16.3 billion barrels
Nominal Value	$451.6 billion
Real Value (2008$)	$740.7 billion

	Future Value of TAPS: 2011 Through 2035	
	Low *	**High + Beaufort Starting in 2016 ***
	9.5 Billion Barrels Remaining	**19.5 Billion Barrels Remaining**
Barrels	5.9 billion barrels	10.9 billion barrels
Nominal Value	$800.5 billion	$1,539.6 billion
Real Value (2008$)	$593.5 billion	$1,122.1 billion

Source of Prices: EIA Annual Energy Outlook 2010 Forecast Reference Prices for Imported Crude Oil in Nominal$ and 2008$

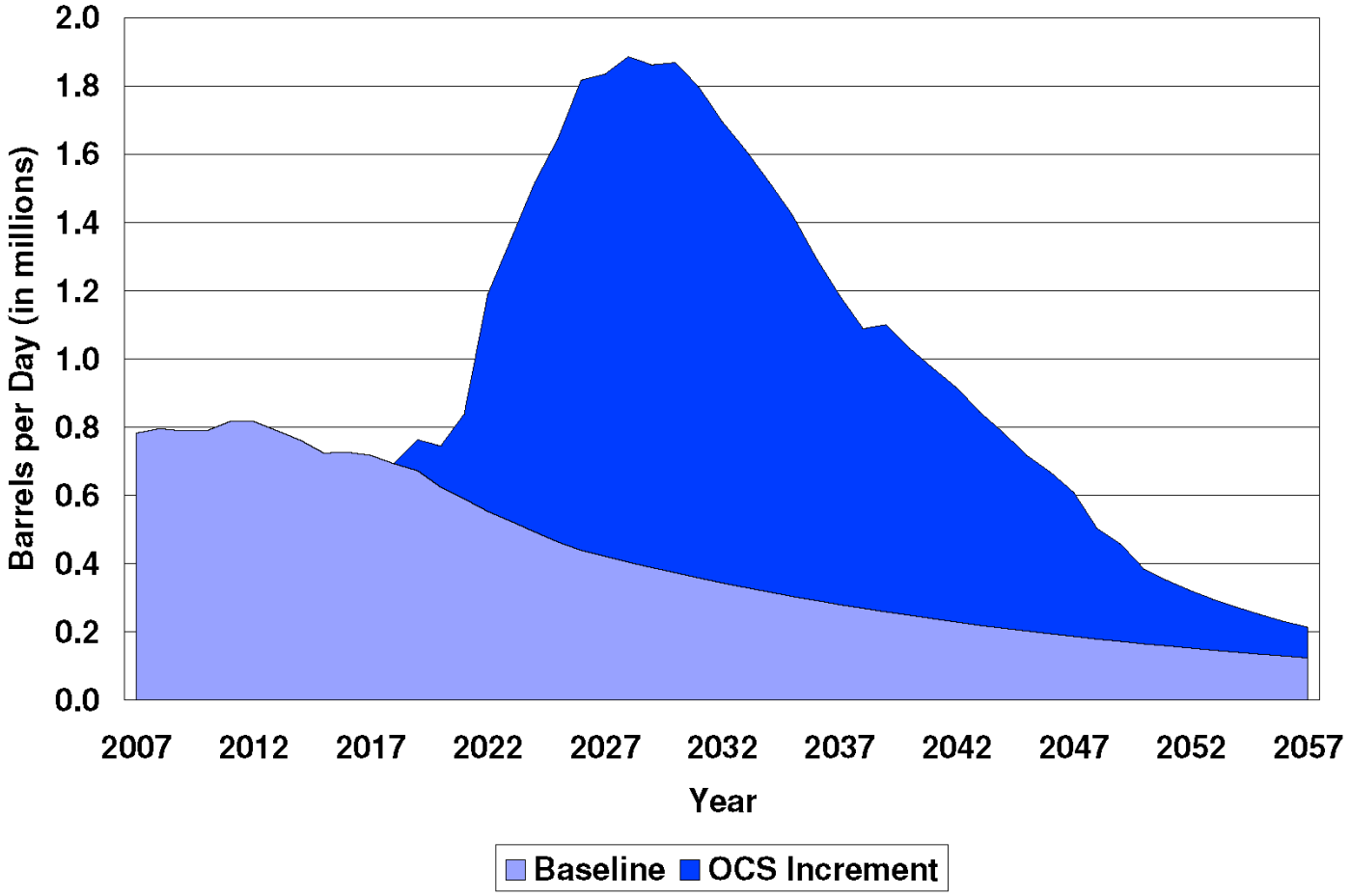
*See DOE/NETL for volumes through 2050, prorated through 2035.

MUN7-9205 at 13

The Life of TAPS

Reserves and Throughput

Oil Production with OCS



THE LIFE OF TAPS - Reserves and Throughput

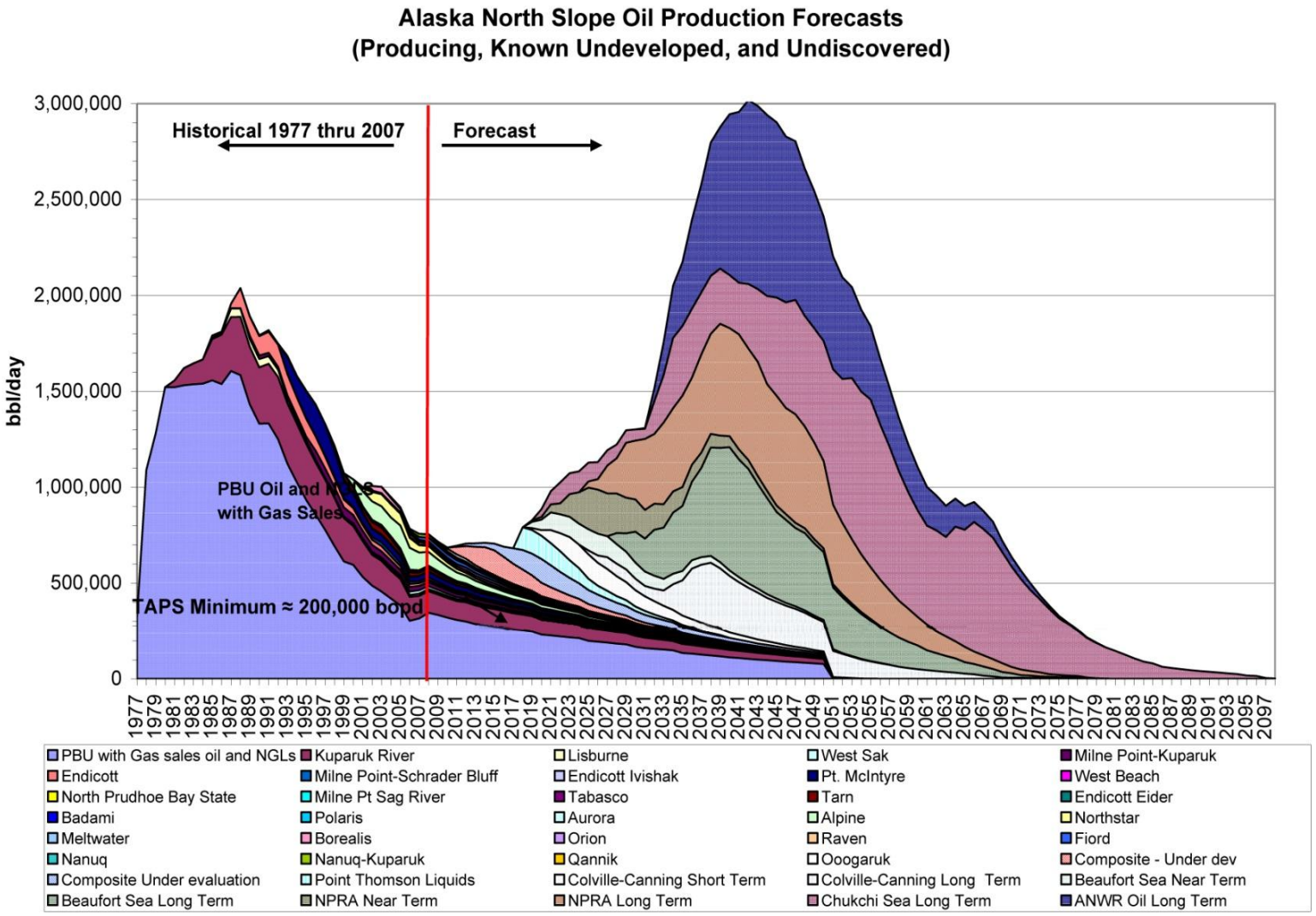


Figure 3-55. Alaska North Slope historical and forecast oil production from producing fields, known undeveloped fields, and undiscovered fields.

MUN7-0014 at 10 (Hite)

The Life of TAPS

Reserves and Throughput

439. The applicable statute requires consideration of the "estimated life of the proven reserves of gas and unrefined oil then technically, economically and legal deliverable into the transportation facility."

Gleason Decision ¶ 439

The Life of TAPS

Reserves and Throughput

465. Dudley Platt is one of the preeminent production forecasters in the state, although he is not a petroleum engineer. He began making oil production forecasts for the State of Alaska in 1989. Mr. Platt prepared a production forecast for the Department every year through 2009. This Court relied on Mr. Platt's production forecast to determine TAPS' end-of-life in the 2006 tax year trial.

Gleason Decision ¶ 465

The Life of TAPS
Reserves and Throughput

468. Decline curve analysis is one component in the determination of the economic life of ANS proven reserves? Mr. Platt's forecast incorporated a decline curve analysis at the pool level, as opposed to a well-by-well analysis used by both the Owners' and Department's witnesses? Mr. Platt persuasively testified that, based on his experience working in the oil industry, long-range production forecasters do not use decline curves on a well-by-well basis? Mr. Van Dyke explained that well-by-well analysis can work well for a small lease in Kansas with four wells, but not for a field with 1,000 wells that are regularly being turned on and off: "it's not the best approach to use a well-by-well method as compared to the pool - a pool level method to forecast production." Decline curve analysis at the well level requires subjective analysis of highly variable historic data to estimate future production rates for each well.

Gleason Decision ¶ 468

The Life of TAPS

Reserves and Throughput

501. Overall, this Court finds that Mr. Molli's Fall 2010 forecast, and the Assessor's adjustments to that forecast for each tax year, are considerably less reliable than the production forecast prepared by the Municipalities' witness Dudley Platt.

Gleason Decision ¶ 501

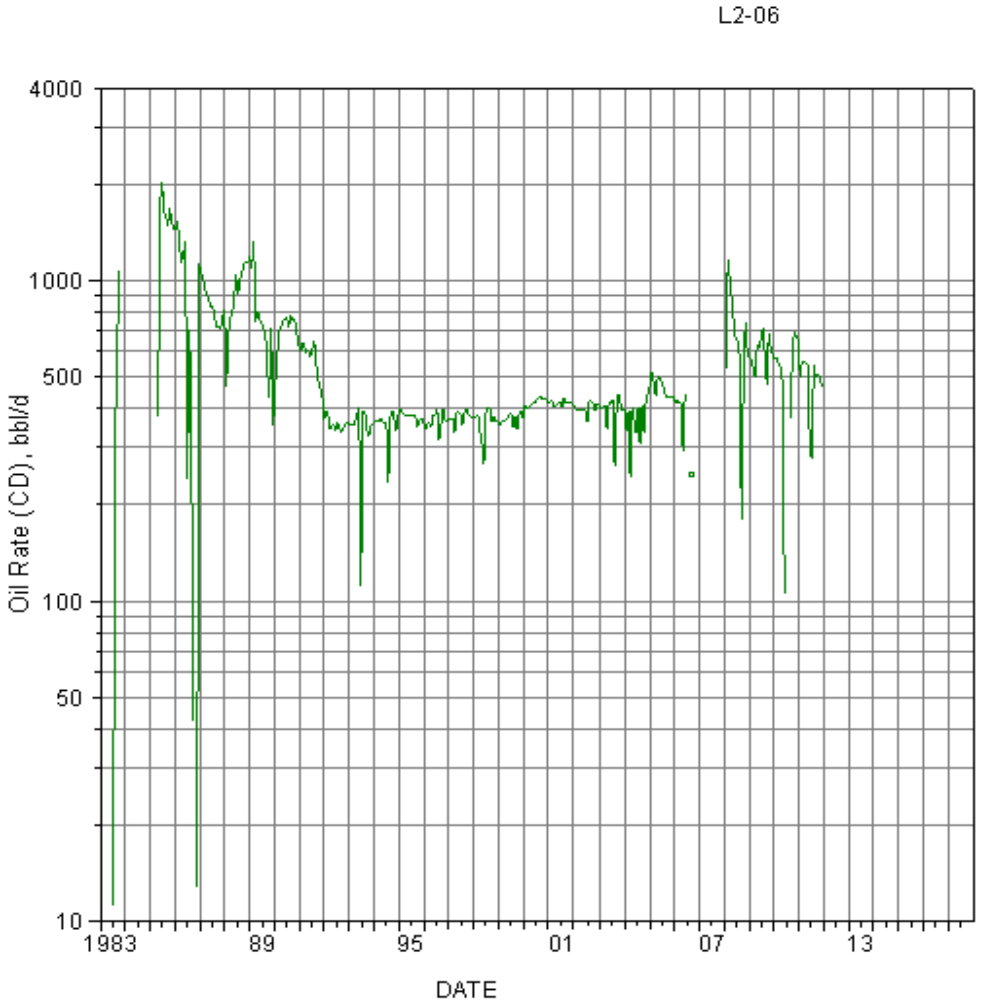
The Life of TAPS
Reserves and Throughput
Pool v. Well-by-Well Forecasting

- In 2009 DOR changed from a pool to a well-by-well forecasting methodology
- "[A] pool based analysis is generally preferable to a well-based analysis." [Gleason Decision ¶ 471]
  - Not relied on by industry
    - Fine "for a small lease in Kansas with four wells, but not for a field with 1,000 wells that that are regularly being turned on and off . . ." [Gleason Decision ¶ 468]
    - Good modeling does not look at wells on a standalone basis
  - Backward looking
    - Requires "subjective analysis of highly variable historic data to estimate future production rates for each well." [Gleason Decision ¶ 494]
    - Often difficult to determine future performance of wells based on just historic data
      - Starts and stops, increasing production, etc.
      - DOR has historic data; it does not know of the story of each well
  - Not holistic, failing to reflect:
    - Industry estimates of oil in place or total recovery
    - Dynamic interaction of physical forces within reservoir, including interaction of wells
    - New projects and wells
      - Thus assumptions must be made about impacts on existing wells and new wells
  - When AS 43.56 enacted, DOR's opinion was "it could be done more accurately on a field basis, as one well could dry up immediately." [Gleason Decision ¶ 470]

The Life of TAPS

Reserves and Throughput

Example of Lisburne Well



For other examples of wells that are difficult to forecast – see Platt Examples in documents provided

The Life of TAPS
Reserves and Throughput

- Municipalities pursued all avenues to get actual field models and reserves information
  - Discovery requests and depositions of Owners
  - Argued Owners had Rule 34 control over production affiliate information
  - Served third-party subpoenas on affiliate producers
  - Sought discovery of BP's data rooms for attempted 2010 sale
- Ended up getting a "patchwork" of reserves and production forecasts from primarily BP; Court would not permit production of BPXA's reserves economic models
- Most useful produced materials related to BPPA's transportation cost estimates for BPXA's reserves economics model
- The BPXA reserves and production estimates in BPPA's possession confirm the reasonableness of:
  - The total barrels recovered under Mr. Platt's forecast
  - The estimated end-of-life of Prudhoe Bay field determined by Mr. Platt and as reflected in the Prudhoe Bay Royalty Trust 10-K filings

The Life of TAPS
Reserves and Throughput

492. The internal reserves and long term production forecasting information that was made available through discovery was not reviewed by two of the Owners' reserves witnesses, Mr. Hartz or Mr. Marks, and only cursorily reviewed by Mr. Hoolahan (and not synthesized into his analysis). Further, Mr. Hoolahan did not have representatives of the Owners or their affiliated producers review his reserves estimates to provide feedback. This is despite the fact that the internal reserves information presented at trial was substantially different from Mr. Hoolahan's conclusions. The fact that none of the Owners' reserves experts meaningfully addressed the BP internal reserves information at trial had a substantial negative impact on the weight this Court accorded to their testimony.

Gleason Decision ¶ 492

The Life of TAPS

Reserves and Throughput

495. The determination of the estimated proven reserves should be assessed in light of the evidence available to, and presented by, each of the parties. The Owners did not persuasively rebut the Municipalities' evidence regarding proven reserves, including information contained in filings by the BP Royalty Trust and the confidential reserves information produced in discovery.

Gleason Decision ¶ 495

The Life of TAPS

Reserves and Throughput

BP Royalty Trust End-of-Life

- The BP Prudhoe Bay Royalty Trust is a publicly traded trust that has a royalty interest in certain BP production
- Each year BPXA provides the Trust and their auditors, Miller and Lents, Ltd., with reservoir, production and other information
- In the past the Trust's 10-K included BPXA's opinion as to the end-of-life of Prudhoe
- "BP Alaska expects continued economic production from Prudhoe Bay field at a declining rate through 2075." [MUN7-4072 at 13]

The Life of TAPS

Reserves and Throughput

502. BP Exploration (Alaska), an affiliated company of one of the taxpayers in this case, BP Pipelines, provides SEC reserves information on the Prudhoe Bay field each year to the BP Prudhoe Bay Royalty Trust. The information is audited by an independent oil and gas consultant, Miller and Lents, before submission to the SEC. The Trust's SEC filing for year-end 2005, using the SEC's heightened "reasonable certainty" standard for proven reserves, represented that "BP Alaska expects continued economic production [from Prudhoe Bay] at a declining rate until the year 2065 ... ." In the year-end 2006, 2007 and 2008 SEC 10-K filings, BP represented continued economic production at Prudhoe Bay until 2062, 2075 and 2049, respectively. The 2049 economic end-of-life calculation for December 31, 2008 was based on the price of oil on that date of $44.60, while the December 31, 2006 economic end-of-life date was based on an oil price of $61.06. Both of these amounts were considerably below the average price of oil during those years and its predicted future price. The 2007 filing was based on the price of oil on December 31, 2007 of $96.01.

Gleason Decision ¶ 502

The Life of TAPS
Reserves and Throughput

503. The following chart sets out the assumed end-of-life in the Prudhoe Bay Royalty Trust SEC filings and as calculated by each of the parties' experts.

Comparison of Prudhoe Bay End-of-Life Determinations

	CY 2007	CY 2008	CY 2009
PB Royalty Trust	2062[837]	2075[838]	2049[839]
Muni @ 100,000 bbl/d	2067[840]	2066[841]	2068[842]
Muni @ Economic Limit	2075[843]	2075[844]	2075[845]
SOA @ 150,000 bbl/d	2040[846]	2040[847]	2040[848]
SOA @ Economic Limit	2043[849]	2044[850]	2053[851]
Hoolahan – Initial	2026[852]	2033[853]	2021[854]
Hoolahan – Corrected	2046[855]	2053[856]	2032[857]

Gleason Decision ¶ 503

The Life of TAPS

Reserves and Throughput

BP Royalty Trust End-of-Life

- The estimated end-of-life has varied each reporting year based on the price of oil
- From as low at 2049 in 2009 to as high as 2075 in 2008
- There is a strong correlation that for every $10 increase in oil prices, the economic life of Prudhoe Bay increases about 5.5 years [MUN7-0001 at 15-16 (Cicchetti)]

The Life of TAPS
Reserves and Throughput

24. I prepared a chart and some simple regressions in Attachment 4 to show the relation between economic life and WTI prices that BP relies upon in its various recent SEC 10-K filings. I plotted the relationship between the estimated life of the Prudhoe Bay reserves and WTI year-end prices. In particular, I found that for every $10 increase in year-end WTI prices, the economic life of Prudhoe Bay increases about 5.5 years. (See the linear regression in Attachment 4.)

MUN7-0001 at 15-16 (Cicchetti)

The Life of TAPS
Reserves and Throughput

MUN7-0001 at 121 (Cicchetti)

The Life of TAPS

Reserves and Throughput

506. With Point Thomson removed from Mr. Platt's corrected reserves estimates for 2007 and 2009, the total proven reserves for each of the lien dates is as follows:

2007 7.812 billion barrels

2008 7.759 billion barrels

2009 7.077 billion barrels

Gleason Decision ¶ 506

The Life of TAPS
Reserves and Throughput

- ANS will continue to economically produce oil, as demonstrated by BP, through 2075 based only on proved reserves

  – Assuming a minimal mechanical capacity of 100,000 bbl/d, the Court found the end-of-life of TAPS given current proved reserves is at least 2066. [Gleason Decision ¶ 505]

- Life of the ANS is even longer when production from heavy oil, ANWR, OCS, and other non-proved sources is considered

The Life of TAPS
Minimum Throughput

- Hydraulic Limit (None)
- Mechanical Limit (Less than 50,000 BPD)
- Operational Concerns (Solutions)
  - Temperature, Wax, Pigging, etc.
  - No Pipeline has Shut in Economic Production
  - Value of Oil Behind Pipe Dominates Solutions
    - 300,000 BPD to 100,000 BPD = 2 Billion of Proved Reserves
    - Engineering Solutions to Low Flow is Pennies / Value of Transporting Oil to Market is Dollars
  - Engineering Solutions Are Apparent

The Life of TAPS
Minimum Throughput

- **Alaska law doesn't contemplate a mechanical limit**
  - AS 43.56.060(e)(2) and 15 AAC 56.110(c) state life of operating pipelines to be "based on the estimated life of the proven reserves"
- **Economic life of other taxable pipelines in Alaska based on life of proven reserves, not a mechanical limit** [2007-2009 Trial Tr. 11565 (Hoffbeck)]
- **Common sense and expert testimony demonstrate no otherwise economic pipeline has shut in at 100,000, 50,000 BPD or below** [2007-2009 Trial Tr. 5130-31 (Riordan); Tr. 8266-68 (quoting Coulson Deposition); Tr. 11895 (Remsha)]
  - Proof is in the Tasting—No pipeline in the history of man has shut-in economic production due to pipeline operational concerns (Example: CIPL)
- **BP has identified engineering solutions to operate TAPS at ultra low flows**
  - Heating gets you to 70,000 BPD; below that options like fluid injection (to get flow rates up) will be identified as needed [MUN7-3020 at 8]
  - "When coupled with the fact that there is a practical limit to the number of heater locations be added, 50,000 BPD to 70,000 BPD is probably the [low flow] limit to [point source heating] due to wax deposition and pigging concerns. Further reduction in flow will require investigation of other options that maintain higher flow velocities, such as seawater commodity supplementation." [MUN7-3020 at 8]
- **Thus state law, Alaska tax practice for other pipelines, industry experience, and BP's own reserves booking contemplate no identifiable mechanical limit**

The Life of TAPS
Minimum Throughput

401. The Municipalities' expert Dr. Jerry Modisette testified that there is no hydraulic or mechanical minimum throughput limit because the pipeline will be within pressure constraints at flows down to zero and the pump rate can also go down to zero through reducing pumps, throttling, and recirculation. Former Alyeska Chief Operating Officer Dan Hisey concurred that there is no hydraulic or mechanical minimum throughput limit on TAPS. The Owners' expert, Ulli Pietsch, also testified that there is no hydraulic or mechanical reason that TAPS cannot operate down to 50,000 bbl/d. The inquiry therefore turns to whether there is an operational constraint that would prevent TAPS from transporting oil at some minimum capacity limit.

Gleason Decision ¶ 401

The Life of TAPS

Minimum Throughput

Testimony of Mr. Ulli Pietsch (Owners' Witness)

Q. I'm going to make this very simple. I want to ask you questions. I'm going to ask you questions in three buckets: Hydraulically, mechanically, and operationally.

A. Okay.

* * *

Q. So there is no reason that TAPS cannot hydraulically operate at a teaspoonful a day, correct?

A. Correct.

* * *

Q. Is there any mechanical reason, that assuming a proper recirculation system is in place, that TAPS cannot operate at 50,000 barrels a day?

A. No.

* * *

Q. Okay. So hydraulically and mechanically, there is no reason that TAPS, as it currently exists, cannot operate down to 50,000 barrels a day, assuming recirculation?

A. Correct.

2007-2009 Trial Tr. 2022-25

The Life of TAPS

Minimum Throughput

404. BPPA analyst John Haines testified at the trial in this case. In an email dated November 5, 2004, Mr. Haines stated:

> Momentum is starting to grow around booking more reserves based on an updated view of TAPS' minimum achievable rates ... Lastly, when TAPS rates reach 100 MBD [100,000 bbl/d] we stop. Our consultant thinks we can probably operate TAPS below this minimum rate, but we didn't want to push it any further at this time.

Gleason Decision ¶ 404

The Life of TAPS
Minimum Throughput

409. In its initial year-end 2004 reserves submission to the BP London office, which was scheduled a couple of months before the JTG Study was concluded, BP Exploration and BP Pipelines personnel determined "an effective TAPS minimum throughput level of 150,000 bbl/d at 2053," using "conservative assumptions." The report added:

> In the case of GPB [Greater Prudhoe Bay] and KRU [Kuparuk River Unit] (the biggest contributors to the reserves adds) each of these fields were still cash flow positive at 2064 (end of our tariff profile). The reserves coordinators arbitrarily chose to cut-off life at the earlier dates (2053 for GPB and 2047 for GKA) just to give themselves some future cushion.

Gleason Decision ¶ 409

The Life of TAPS

Minimum Throughput

406. In 2004, BP Pipelines retained JTG Technology Consortium to conduct a study to revisit the minimum throughput limit on TAPS, The 308-page JTG report was completed in 2005 ("JTG Study") and concluded that "the low flow limit of the existing 48-inch TAPS pipeline was determined to be a PS [Pump Station] 1 rate of 135 MB/day [135,000 bbl/d]."

Gleason Decision ¶ 406

The Life of TAPS

Minimum Throughput

408. BPPA and its affiliates relied upon the JTG Study's conclusion of a 135,000 bbl/d low-flow limit to create tariff profiles that BP then used to report its reserves for several years to the SEC.

Gleason Decision ¶ 408

The Life of TAPS

Minimum Throughput

412. BP Pipelines failed to provide the 2005 JTG Study in discovery for the 2006 ad valorem tax year proceedings. That study would have supported the Municipalities' position in that litigation that TAPS could operate down to 150,000 bbl/d or less, and may well have resulted in the Court finding a minimum capacity limit lower than the 200,000 bbl/d that this Court applied for that assessment year.

Gleason Decision ¶ 412

The Life of TAPS

Minimum Throughput

414. In 2010, BP Pipelines retained Phil Carpenter, a subject matter expert who was also used extensively by Alyeska in its Low Flow study, to determine whether TAPS could operate at levels below the 135,000 bbl/d threshold put forth in the 2005 JTG Study. At trial, Mr. Haines of BP Pipelines explained:

> The JTG study ... essentially had two different paths that you could live with ... One path was you would throw investments at TAPS and eventually the south leg would die at a rate of 135. You would start a railroading apparatus at that point. ... the south leg always died first because of the extraction of oil at Fairbanks at the Fairbanks refinery ... Except if you wanted to throw another $3 billion at the problem and replace the north leg with a replacement 20-inch line ... [so as to be able to transport down to 45,000 bbl/day] ... And the economic hurdle of paying for that $3 billion of replacement line investment created a very large stair-step in the economic profile, the granularity I was talking about.

Gleason Decision ¶ 414

The Life of TAPS
Minimum Throughput

415. In a May 19, 2010 email, Mr. Haines provided Mr. Carpenter with a copy of the 2005 JTG Study and explained:

> You probably want to start with the executive summary. As we discussed on the phone, our reserves reporting relied on a 'low oil Price' scenario and a 'high oil price scenario.' These are identified in the report as Scenario 2 and Scenario 3. What we are looking for in your work effort is some sort of intermediate solution that could be used to extend the limit beyond 135 MBD [135,000 bbl/d] (Scenario 2), but would not have a $3 billion hurdle that would allow us to get down to 45 MBD [45,000 bbl/d]. In other words, something for a "middle oil price" scenario.

Gleason Decision ¶ 415

The Life of TAPS
Minimum Throughput

416. A June 11, 2010 email from Mr. Carpenter contained a list of over a dozen low throughput options he had analyzed. On June 15, 2010, Mr. Haines responded back that:

> I've had a chance to talk to our upstream reserves guys, and they advise that Option 2 (run cold and sweep with freeze suppressant) sounds like it might be pushing things too far, because it requires achieving a level of confidence in the physics of the problem - a level of "proof" that our study will not be capable of fully defining. So, they agree we can drop it from the list ....

Mr. Haines then discussed the various other options, concluding:

> From a pragmatic viewpoint, it seems to me that item 1 (heaters) may be exactly what we're looking for (in terms of finding a sure-fire way to bridge between the 135 MBD [135,000 bbl/d] endpoint and the large capital cost of replacing the north leg). I say this because if we can find a way to lower the endpoint from 135 MBD [135,000 bbl/d] to say something in the range of 100 MBD [100,000 bbl/d] or less, that kind of solution would probably act to close the gap our reserves guys are seeking.

Gleason Decision ¶ 416

The Life of TAPS
Minimum Throughput

418. Consistent with that opinion, on July 20, 2010, Mr. Carpenter circulated a draft of the 2010 Carpenter Study: "The analysis concluded that point source heating of the oil is the best solution for operation of 100,000 [bbl/d]." Mr. Haines' response to the draft stated:

> Thanks for the updated report. This is shaping up nicely, and is exactly the "fit for purpose" product we were looking for. ... Probably the most significant edits we've made to your most recent draft involved turning on the railroad when the PS-1 rate hits 140 MBD [140,000 bbl/d] (and turning off the south leg), and running the north leg down to 70 MBD [70,000 bbl/d]. This means some of the south leg heaters will likely not be installed at rates below 140 MBD [140,000 bbl/d] (because of laminar flow issues).

Gleason Decision ¶ 418

The Life of TAPS
Minimum Throughput

420. The 2010 Carpenter Study did not foreclose lower throughput levels below its conclusions, acknowledging that other technologies apart from point source heating "may eventually offer better solutions with fewer unknowns, lower throughput limits and lower shutdown risk, but these options are less developed and well understood at this time." The Study stated that "50,000 [bbl/d] to 70,000 [bbl/d] is probably the limit for [the point source heating] approach due to wax deposition and pigging concerns. Further reduction in flow will require investigation of other options that maintain higher flow velocities, such as seawater commodity supplementation."

Gleason Decision ¶ 420

The Life of TAPS

Minimum Throughput

422. In the fall of 2010, BPPA used the lower minimum throughput determinations from the Carpenter Study in its transportation tariff calculations. Those calculations, in turn, were provided to BP Production forecasting personnel who then used that information to book BP's proven reserves in 2010. That BP relied upon the Carpenter Study's 100,000 to 70,000 bbl/d low flow estimate to book its reserves is compelling evidence that these figures may be reasonably relied upon by this Court to determine the assessed value of TAPS.

Gleason Decision ¶ 422

The Life of TAPS
Minimum Throughput
The Studies: Alyeska LoFIS

- The Alyeska Low-Flow Impact Study (LoFIS) was limited in scope: "Flow volumes of less than about 350,000 BPD subject TAPS operations and pipeline integrity to greater degrees of uncertainty that require investigation and study beyond that accomplished through the LoFIS. Measures to mitigate these issues utilizing the existing 48-inch pipe at throughputs below 350,000 BPD have not been determined at the date of this report."

  [Executive Summary of LoFIS Final Report (public version, June 15, 2011) at 3]
- Mr. McDevitt's deposition and trial testimony confirmed that the LoFIS team was subject to a 300,000 bbl/d limit. [2007-2009 Trial Tr. 10975-82] Mr. Haines also confirmed the limitation. [2007-2009 Trial Tr. 11404]

The Life of TAPS

Minimum Throughput

Alyeska Cannot Show A 300,000 bbl/d Limit

- Mr. McDevitt stated at trial that it was not possible for TAPS to operate under 300,000 bbl/d, but later changed his answer to “highly unlikely” when asked in the context of BP’s booking practices. [2007-2009 Trial Tr. 11025-27, 11093]
- Mr. Carpenter was a subject-matter expert for water transport, hydraulic size formation and heat transfer in the Alyeska LoFIS team while he conducted his study for BP. [2007-2009 Trial Tr. 10960-61]
- Mr. Riordan testified that he did not know for a fact that the existing facility cannot operate at 100,000 bbl/d. [2007-2009 Trial Tr. 5129]

The Life of TAPS

Minimum Throughput

430. This Court finds the JTG and Carpenter studies, which were conducted by TAPS' largest Owner for the specific purpose of evaluating the ability of TAPS to operate at throughputs well below 300,000 bbl/d and relied upon by BP for booking its proven reserves, to be far more persuasive than the LoFIS study in determining TAPS' minimum throughput capacity.

Gleason Decision ¶ 430

The Life of TAPS
Minimum Throughput

431. At trial, the Municipalities' expert Dr. Jerry Modisette persuasively opined why he had determined that TAPS could operate at 100,000 bbl/d. Indeed, Dr. Modisette asserted TAPS could operate at far lower throughputs than that, particularly if the oil were recirculated through the pumps so as to raise its temperature - a project Alyeska is planning to try this winter.

Gleason Decision ¶ 431

The Life of TAPS

Minimum Throughput

432. With regard to the low-flow operational issues identified in the Alyeska study, including water dropout and corrosion, ice formation within the crude oil, ice lenses or frost heaves in the soil, and wax precipitation and deposition, the weight of the evidence at trial persuaded this Court that it is more likely than not that there will be engineering solutions to mitigate these problems on TAPS at throughputs down to 100,000 bbl/d or less.

Gleason Decision ¶ 432

The Life of TAPS

Minimum Throughput

The Operational Issues Can Be Mitigated

Hisey Chart	Mitigation Measures Available															
	Water			Heat			Pigging						Chemical Treatment			
Issue/Concern	Lower Spec Limit	Remove	Improve Monitoring Capability	Recirculate	Point Source	Add, Repair, Replace Insulation	Increase Frequency	Add Launchers Receivers	Divert Incoming Stream	Install Washers	Modify Cleaning Pig Design	Modify Operating Procedure	Corrosion	Freeze Point	Emulsion	Wax Point
Wax																
pipe wall deposit				X	X	X	X	X		X	X				X	X
instrumentation	X	X	X	X	X	X								X	X	X
smart-pig data				X	X	X	X	X			X					X
cleaning volume				X	X	X	X	X	X	X	X				X	X
Ice																
equipment damage	X	X	X	X	X	X			X					X		
valve operation	X	X	X	X	X	X	X				X		X	X		
ice plugs	X	X	X	X	X	X	X	X			X		X	X		
Other																
Cold Restart	X	X	X	X	X	X						X		X	X	X
Frost Heave				X	X	X										
Increased corrosion	X	X	X				X	X					X	X	X	
Slack Line												X				
Crude Oil "gelling"				X	X	X									X	X

The Life of TAPS
Minimum Throughput

434. The August 2010 Larkspur Study estimates approximately $2 billion in undiscounted costs for heating TAPS so as to be able to transport 100,000 bbl/d. This is based on the 2010 Carpenter Study's use of substantial redundancy resulting in 70% excess heating capacity. Thus, the actual cost could well be considerably lower. However, even Larkspur's estimated expense is self-evidently economic in light of the value of TAPS' proven reserves, The Court was persuaded by Mr. Hisey's testimony that even if the heating and other mitigation measures cost upwards of hundreds of millions of dollars in the coming decades, it would still be economical to make such investments to keep TAPS operating at and below 100,000 bbl/d

"to move North Slope crude oil and keep that transportation base available for future fields, future production."

Gleason Decision ¶ 434

The Life of TAPS

Minimum Throughput

437. This Court finds the conclusions reached in the 2005 JTG study, together with the opinions reached in the 2010 Carpenter Study and Larkspur Study, as well as the opinions of Dr. Modisette and Mr. Hisey, to be more credible and persuasive than Mr. McDevitt's opinion on TAPS' minimum throughput capacity.

Gleason Decision ¶ 437

The Life of TAPS

Minimum Throughput

438. For the foregoing reasons, and after careful consideration of all of the evidence presented at trial, this Court finds it more likely than not that TAPS can effectively transport throughputs at least down to a minimum flow rate of 100,000 bbl/d.

Gleason Decision ¶ 438

The Life of TAPS
Minimum Throughput
Maximum Limit of 100,000 BPD

- Mr. Hisey testified that even hundreds of millions of dollars in heating and other low flow mitigation efforts are economic to keep TAPS operating at and below 100,000 bbl/d [2007-2009 Trial Tr. 9000]
- Dr. Modisette testified that the Texaco Cal 20 pipeline uses more heating per unit than the worst case heating scenario for TAPS [2007-2009 Trial Tr. 9061-63]
- No witness was aware of a pipeline that shut in production for operational reasons when it was flowing economic oil [2007-2009 Trial Tr. 674 (Remsha); Tr. 5130-31 (Riordan); Tr. 8266-68 (quoting Coulson deposition); Tr. 9218 (Malvick); Tr. 11090 (McDevitt); Tr. 11895 (Remsha)]

The Life of TAPS

Minimum Throughput

Economics of Continued Operation

Forecast Year	Platt Production Rate Range (barrels/day)	Stranded Oil Volume Over Applicable Forecast Range	Average EIA Real Oil Price Forecast Over Applicable Time Period (per bbl)	Total Value of Stranded Oil
2009				
	300,000 to 100,000	2.0 billion bbl	$169.06	**$338,120,000,000**
	200,000 to 100,000	1.2 billion bbl	$177.25	$212,700,000,000
	150,000 to 100,000	0.7 billion bbl	$183.30	$128,310,000,000

SOURCES:

MUN7-4306, MUN7-4309, and MUN7-4313

MUN7-0017 p. 23

The Life of TAPS
Source Materials

- Platt Report (MUN7-0024)
- Platt Rebuttal Report (MUN7-0026)
- Hite Report (MUN7-0014)
- Van Dyke Report (MUN7-0017)
- Van Dyke Report Supplement (MUN7-0018)
- Unpredictable Wells Data
- BP Royalty Trust (MUN7-4072)
- JTG Report (MUN7-3000)
- Carpenter Study (MUN7-3020)
- Larkspur Study (MUN7-3044)
- Haines Testimony
- Modisette Report (MUN7-0028)
- Hisey Report (MUN7-0034)
- Hisey PowerPoint

Access to Information

- Relevant Statutes
- Department Will Not Use Subpoena Power
- The Department Overuses Taxpayer Confidential Designations
- Department Will Not Agree to a Joint Administrative Agreement

Access to Information

491. SARB observed the following in its Certificate of Determination for the 2007 assessment year:

> The Board also found that the Owners failed to take advantage of the opportunity to provide the Division with persuasive data to challenge the reserves estimates or throughput projections used by the Division if the Owners have such data. The Board found that the Owners chose not to the [sic] share information that the Owners and their parent companies possess regarding throughput and proven reserves with the Division or the Board and instead chose to present evidence and testimony from outside experts who did not have access to the information the Owners possess that was not already in the public record, and who lacked adequate direct experience with, or expertise about, the TAPS or the Alaska North Slope reserves.

Gleason Decision ¶ 491

Access to Information

5. AS 43.56.080 grants the Division certain investigative powers when assessing AS 43.56 properties, including the power to "enter any premise necessary for the investigation during reasonable hours," to "examine property and appropriate records," and to compel owner representatives "to appear for examination under oath by the department." There was no persuasive evidence presented at the trial de novo that the Division has ever exercised these powers with respect to the valuation of TAPS.

Gleason Decision ¶ 5

Access to Information

6. The Division broadly interprets what it considers "taxpayer confidential" information under applicable statutes and will not disclose such information to the Municipalities specifically or to the public generally. The Division considers all information that it receives from a taxpayer as "taxpayer confidential," even if it does not contain the particularities of a taxpayer's business affairs and is obtainable from the public domain. As a result, the Division did not provide the Owners' new replacement cost study by Stantec Consulting, Inc. ("Stantec") to the Municipalities.

Gleason Decision ¶ 6

Access to Information

7. AS 43.56.060(g) provides that "[t]he department may enter into agreements with a municipality for the cooperative or joint administration of the assessing authority conferred on the department by this section." The North Slope Borough previously had such an agreement with the Department. The City of Valdez and Fairbanks North Star Borough have never been parties to joint assessment agreements with the Department.

Gleason Decision ¶ 7

Access to Information

8. In its 2010 decision, SARB expressed its concerns regarding the Division's assessment practices:

> The Board believes that it is time for the Division to address the problems created by the way it handles taxpayer confidential information in the assessment process. The Division's failure to provide interested parties with the information on which the assessment was made in time to allow those parties meaningful input in the determination of the property's assessed value, before that determination is subject to limited review of an appeal before the Board, has the potential to throw the fundamental fairness of the AS 43.56 assessment process into question. The Board believes that, due to the Division's current practices with regard to the use of taxpayer confidential information in its AS 43.56 assessments, that process is close to broken and is headed in the wrong direction.

This Court concurs with the Board's observations in this regard.

Gleason Decision ¶ 8

Access to Information
Information at DOR Level

- History of TAPS Valuation
- DOR Process
- Access to Taxpayer Information
- Treatment of Taxpayer Information
- Consequence of Lack of Access to Information

Access to Information

History of TAPS Valuation

- DOR relying on TSM based rates lead the assessments falling from over $8 billion in the mid-1980s to $2.75 billion in 2001 [Gleason Decision ¶ 30]
- For decades the valuation of TAPS was a negotiated process that largely excluded the Municipalities
- The Municipalities fully engaged the process for the 2005 assessment

Access to Information
Observation About DOR's Process

- Key DOR staff are fair, dedicated, and highly competent
- The SARB has also been balanced and diligent
- However the DOR process–as related to information relied on in the taxation process–is close to broken. [Gleason Decision ¶ 8]

Access to Information
Access to Confidential Information

- Taxing authorities typically compel information
  - DOR can subpoena information, depose taxpayer representatives, and investigate property and records

    [AS 43.56.080; AS 29.45.130; AS 43.55.040(a)]
- DOR policy is to work cooperatively with industry, so it does not exercise these powers [Gleason Decision ¶ 8]
- Thus, DOR relies on information that a taxpayer volunteers or that is publicly available

Access to Information
Taxpayer Information

- The Alaska Public Records Act, AS 40.25.110, requires State documents to be subject to public examination

- Exception exists under AS 40.25.100(a) for tax information "that discloses the particulars of the business or affairs of a taxpayer" in which case the "information shall be kept confidential except when . . . required in an official investigation [or proceeding]"

- AS 43.05.230(a) also makes it unlawful to "divulge the amount of income or the particulars set out or disclosed in a report or return" except in conjunction with "investigations or proceedings"

Access to Information
Taxpayer Information

DOR narrowly reads taxpayer confidentiality statutes, denying public access to:

- All information provided by taxpayers
  - Non-sensitive correspondence, hypothetical studies, publicly available information, etc.
- Information provided for its production forecasting, which is a budgeting function [2007-2009 Trial Tr. 8813-14, Tr. 10874-877]
- The Municipalities
  - AS 43.56.060(g) allows for joint administration of taxes
  - North Slope Borough had such an agreement until recently

Access to Information

Consequence of Information Access

- Industry acts to prevent the best information from harming its position on taxes
  - Low flow documents
  - Royalty trust statements removed
  - BP Pipelines no longer participating in reserves function [2007-2009 Trial Tr. 11480]
  - As a matter of policy DOR does not compel the production of useful information
- DOR does not make publicly available taxpayer information in its possession
- Result–DOR and Legislature do not have access to information necessary to be informed about oil and gas tax issues in Alaska

Access to Information
Source Materials

- Alaska Statutes

Conclusion

- Open Access to Facilities
- Reasonable Transportation Rates
- Minimize Barriers to Entry
- Sound Tax Policy
  - Recognizes Market Structure
  - Recognizes Specific Behavior and Participants Most Likely to Be Impacted by Tax Incentives
  - Recognizes Stage of Development of Basin

THANK YOU