

Alaska to U.S.: You Owe Us \$29 Billion

The State of Alaska filed suit on July 22 against the United States in the Court of Federal Claims, alleging breach of the Alaska statehood compact. We argue that the United States has broken the compact by failing to give Alaska 90% of revenues from mineral leasing on federal land. We seek damages of \$29 billion.

The litigation is rooted in the history of Alaska statehood. In 1958, when statehood was being considered, the vast Territory of Alaska was a wealth of natural resources, yet some members of Congress and many Alaskans believed that Alaska would be unable to generate sufficient revenues

Rule of Law

By Charles E. Cole

from traditional sources to meet the expenses of statehood.

As a state, Alaska's taxing power could not be expected to produce much income: 99.9% of its land was federally owned and therefore untaxable, its industrial base was extremely limited, and its population was too small to produce much more than a trickle of income tax revenue. Further, Congress recognized that a republican form of government would be proportionally much more expensive in Alaska, where the territory's population of 211,000 was spread over a land mass one-fifth the size of the contiguous 48 states, far from the rest of the Union.

To ensure that Alaska could meet the economic demands of statehood, Congress included three extraordinary grants of natural resource interests in the Statehood Act. Congress granted the state 103.35 million acres of land, inalienable mineral rights to this land, and a 90% share of the

revenues from mineral leases on the lands in Alaska that were retained by the federal government.

The House Committee on Interior and Insular Affairs characterized the 90% revenue grant as one of the "major provisions" of the Alaska Statehood Act. The Senate Committee on Interior and Insular Affairs "deem[ed] it only fair that when the State relieves the United States of most of its expense burden, the State should receive a realistic portion of the proceeds from resources within its borders."

The 90% revenue grant is unique to Alaska. Sixteen other states, by comparison, directly received only 50% of mineral revenues from federal lands within their borders, with 40% more dedicated to the Reclamation Fund, a federal fund used for water and conservation projects in those states. To ensure Alaska's viability, however, Congress increased Alaska's share to 90% and offered it as an inducement to Alaskans to accept the financial burdens of statehood. The 10% retained by the United States was to compensate the federal government for the cost of administering the mineral leases.

The 90% revenue provision was included in the Alaska Statehood Act passed by Congress and signed into law by President Eisenhower on July 7, 1958. The act also required, however, that Alaska's electorate approve statehood and consent to "the terms or conditions of the grants of lands or other property therein made to the State of Alaska."

Alaskans studied and considered the Statehood Act provisions before voting in the statewide referendum. Local newspapers published the text of the act in August 1958, and Interior Secretary Fred Seaton visited Alaska and delivered speeches outlining the act's terms. In a speech to the Anchorage Chamber of Commerce on Aug.

25, Secretary Seaton discussed the land and mineral rights grant and the 90% revenue provision. He assured his listeners that according to an analysis prepared by the Department of the Interior, the additional costs of statehood would be more than offset by these additional revenues to be provided to the state.

On Aug. 26, 1958, Alaskans voted 40,452 to 8,010 for the admission of Alaska to the Union on the terms provided in the Statehood Act. Upon acceptance, the Statehood Act became a compact.

Since Alaska became a state in 1958 the federal government has violated its promise to provide the state with 90% of the mineral revenues from federal lands.

A statehood compact is essentially a contract. It constitutes Congress's agreement to admit a state into the Union with all the sovereign attributes of the existing states, and the citizens' agreement to accept the social, political and financial responsibilities of self-governance.

Having agreed to a compact's terms, the federal government cannot unilaterally alter them; any alteration requires the state's consent. As the Supreme Court has stated (*Asarco Inc. v. Kadish*, 1989) in discussing a statehood compact: "Congress could not . . . grant lands to a state on certain specific conditions and then later, after the conditions had been met and the lands vested, succeed in upsetting settled expectations through a belated effort to render those conditions more onerous."

Since Alaska's statehood, however, the federal government has violated its

promise to provide the state with 90% of the mineral revenues from federal lands. When the Statehood Act was ratified, nearly all the federal land in Alaska was open to leasing under the Mineral Leasing Act. Congress, in passing the Statehood Act, and Alaskans, in ratifying it, understood that the revenue provision applied to all of these lands.

In the 35 years since statehood, however, Congress has systematically withdrawn federal lands from potential mineral leasing, thereby keeping the state from realizing revenues from mineral development on these lands. Currently, more than 100 million acres of the 218 million acres of federal land in Alaska are closed to mineral leasing. In addition, Congress recently has begun to deduct administrative costs from the state's 90% share of revenues.

Congress's breach of the revenue provision is blatant. If Congress, on the day following admittance of Alaska into the Union, had withdrawn the same amount of federal lands within the state from mineral leasing, no one would doubt that Congress had broken its word to Alaska. Yet over the years, Congress's cumulative withdrawals have had the same effect. Alaskans believe that the federal government has not acted in good faith.

In bringing suit against the United States, Alaska seeks to enforce Congress's promise, upon which its citizens relied in accepting statehood, and to which Congress is bound. If Congress did not intend to honor its promise to pay Alaska 90% of mineral lease revenues on federal lands, it should not have made the provisions part of the statehood bargain.

The Department of the Interior has stated that it does not take Alaska's lawsuit seriously. It should.

Mr. Cole is attorney general of Alaska.