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DEPARTMENT OF
NATURAL RESOURCES

APR 17 2012

COMMISSIONER'S OFFICE
ANCHORAGE

April 17, 2012

VIA PERSONAL SERVICE AND E-MAIL

Commissioner Dan Sullivan
Department of Natural Resources
State of Alaska
550 W. 7th Ave., Suite 1400
Anchorage, Alaska 99501
dnr.appeals@alaska.gov

Re: Reconsideration of the Point Thomson Settlement Agreement;
Former Superior Court Case No.: 3 AN-06-13751 CI (consolidated);
Former Supreme Court Case No.: S-13730 (consolidated);
Our File No.: 449-1.

Dear Commissioner Sullivan:

On March 29, 2012, the attorney general ("Attorney General") and commissioner ("Commissioner") of the Department of Natural Resources ("Department"), on behalf of the State of Alaska ("State") and acting through the Department, and the Point Thomson Unit ("PTU") working interest owners (each an "Owner" or "WIO" and collectively "Owner Group" or "WIOs"), finalized a settlement agreement ("Settlement" or "Agreement") relating to the Point Thomson Unit ("PTU").

The Settlement was the basis to dismiss ongoing litigation related to the Department's efforts to terminate the PTU. The parties before the Alaska Supreme Court, in Case No. S-13730 (consolidated), signed the Joint Stipulation for Dismissal of Petition for Review on March 27, 28 and 29, 2012.[1] That stipulation by stamp of the Court was filed at 3:20 p.m. on March 29, 2012 and by The Order Dismissing Petition for Review was granted on the same date. Similarly, the parties before the Alaska Superior Court, in Case No. 3AN-06-13751 CI (consolidated), filed a Joint Stipulation for Dismissal of Administrative Appeal on March 29, 2012, also granted by [Proposed] Order Dismissing Administrative Appeal on the same date by the Honorable Brian

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[1] Susan Orlansky of Feldman Orlansky & Sanders signed on behalf of BP Exploration (Alaska), Inc. ("BP"), and Stephen M. Ellis of Delaney Wiles, Inc. on behalf of Chevron U.S.A. Inc. ("Chevron") signed on March 27, 2012; Spencer C. Sneed of Dorsey & Whitney LLP on behalf of ConocoPhillips Alaska, Inc. ("ConocoPhillips"), Barat M. LaPorte of Patton Boggs LLP on behalf of Exxon Mobil Corporation ("Exxon" or "Unit Operator"), David B. Rusk of David B. Ruskin, P.C. of Leede Operating Company, LLC ("Leede"), and Mathew T. Findley of Ashburn & Mason, P.C. on behalf of the State signed on March 29, 2012.

Clark, Superior Court Judge *pro tem*. That joint stipulation was signed by counsel for the parties on the same dates as the Joint Stipulation for Dismissal of Petition for Review before the Alaska Supreme Court. Also on March 29, 2012 the parties filed and were granted, by Judge Clark, a Joint Motion to Vacate February 11, 2010 Partial Stay; Request for Expedited Consideration, which had attached a copy of the Settlement signed by the parties on March 28 and 29, 2012.[2] The rushed nature of these dismissals is particularly concerning given Settlement ¶¶ 4.10.1 and 4.10.3.2 provided for vacating the cases in an orderly manner, within 10 days or so after execution of the Agreement. Yet it occurred in secret, by expedited motion, a day before the deal became public. Those pleading are attached as Exhibit 1.

On March 30, 2012 the Settlement was announced to the public via a press conference held by State Governor Sean Parnell and the Commissioner (audio file of the press conference attached as Exhibit 2), in which a letter dated March 30, 2012, signed by the respective Presidents of BP, Exxon and ConocoPhillips (Exhibit 3), announced a plan to mutually assess, in conjunction with the State and Alaska Gasline Inducement Act, AS 43.90 *et seq*. ("AGIA") licensee, a liquefied natural gas ("LNG") export project from South Central Alaska.

The Settlement broadly encompasses terms relevant to the future development of the PTU, Prudhoe Bay Unit ("PBU"), and an Alaska North Slope ("ANS") gas commercialization project. It purports to bring definitive resolution to such subjects as *inter alia*: (i) disputes as to the termination of the PTU and underlying leases; (ii) creation of participating areas within the PTU; (iii) the expansion and contraction of acreage into and out of the PTU; (iv) the plan of development ("POD") for the PTU; (v) certain terms in the event of a major gas sale; (vii) reinjection of PTU gas into the Prudhoe Bay Unit; (viii) the use of and accounting for the State's royalty gas out of the PTU and into the PBU after reinjection; (ix) the taxation of PTU gas; (x) advanced approval of reassignment of the WIOs interests in the PTU, presumably including Exxon's acquisition of Chevron's interests in the PTU; and (xi) the procedure for handling future disputes of these subjects.

As will be discussed further, upon initial review it does not appear to William M. Walker, a citizen taxpayer of the State ("Walker"),[3] that the substantive terms of the settlement are advantageous to the future development of the PTU or ANS gas commercialization efforts. Additionally, the Department and Owner Group have attempted to settle a host of issues associated with ANS development, but have done so without any of the public process, regulatory action, and legislative approvals contemplated by Alaska law. Settlement ¶ 5.8 provides that the Agreement constitutes a finding of the Commissioner. So although the authority of the State to enter into the Settlement, and the correct procedures the State must follow to do so, are disputed, it appears the proper vehicle for Walker to challenge the Settlement is as a request for reconsideration under 11 AAC 2.010(f). Consequently Walker asks the

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[2] Attorney General Michael C. Geraghty signed on March 28, 2012; Commissioner Daniel S. Sullivan, Randy L. Broiler of Exxon, John C. Minge of BP, Trond-Erik Johansen of ConocoPhillips, and John G. Leede of Leede signed on March 29, 2012.

[3] Walker claims standing to bring this appeal, not only as a citizen taxpayer, but as a result of interest-injury, third-party, and any other form of standing recognized by the Alaska Supreme Court.

Commissioner to reconsider his decision to enter into the PTU Settlement as: (i) not in the best interests of the State; (ii) in contravention to State law and regulation; (iii) unconstitutional; and (iv) *ultra vires* without legislative approval. The specifics of Walker's points of appeal are detailed below.

Please serve any notice, decision or other correspondence to the following address:

Craig Richards
Walker & Levesque, LLC
731 N Street
Anchorage, Alaska 99501

I. The Settlement is Not in the Best Interests of the State of Alaska.

A. The State Has Not Previously and Should Not Now Enter into Bargains of This Magnitude With the Three Primary ANS Producers With No Public Process.

It is irrefutable that ANS oil production is dominated and will continue to be dominated in the coming decades by affiliates of ConocoPhillips, Exxon and BP.[4] Perhaps the most telling evidence of this phenomenon is that, even though TAPS has been in operation for three decades, there is only one independent shipper. It is equally clear that the same integrated producers expect to dominate ANS natural gas production when and if they concede to commercialization of that resource.[5] This dynamic has resulted in an unflattering history where the companies have used their market dominance to negotiate, or attempt to negotiate, large scale concessions from the State outside of a traditional competitive process that should otherwise be expected in dealings with a sovereign government. Some of the more notorious of those deals are: (i) the TAPS Settlement Methodology; (ii) renegotiation of the North Star leases; (iii) BP's attempted acquisition of Atlantic Richfield Company's Alaska's assets, resulting after Federal Trade Commission intervention in the Charter for Development of the ANS;[6] and (iv) the proposed Stranded Gas Development Act Contract negotiated by the Murkowski Administration.

But even these company specific deals pale in comparison to the Settlement in one material aspect. Never before has a deal of the magnitude of the Settlement been entered into by the State and ANS producers without public notice and the opportunity for public comment. It is simply unprecedented in the annals of Alaska history for the executive branch to attempt to bind

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[4] Amended Decision Upon Reconsideration Following Trial De Novo, 2006 Assessed Valuation of the Trans Alaska Pipeline System ("TAPS") at ¶ 104 (October 26, 2010) (Exhibit 4); Decision Following Trial De Novo, 2007, 2008, 2009 Assessed valuations of the TAPS at ¶ 70 (December 30, 2011) (Exhibit 5).

[5] *See, e.g.*, Exhibits 7.1, 7.2 and 7.3.

[6] *See* State Department of Environmental Conservation website for documents related to the Charter, which are incorporated into the record by reference herein <available at http://dec.alaska.gov/spar/ipp/nscharter.htm>.

the citizenry to such a sweeping set of concessions, with no public involvement and without legislative approval.

B. Form of the Administrative Record.

Walker has had less than twenty days to review the Settlement, and has not had the opportunity to compare his understanding of its terms against that of the parties or review any of the correspondence between the State and Owner Group. Consequently Walker bases his understanding of it and the surrounding deal relating to gas pipeline development primarily on a reading of the document and the attached exhibits. Walker acknowledges that the reading of one or more of the portions of the Settlement, and intent behind them, may be incorrect. However, a thorough public vetting of the Agreement is the proper way to ensure the public has an understanding of its terms, it is in the best interests of the State, and it is legally entered into by the current administration.

Walker also incorporates herein, and requests the Department make part of the record of this motion to reconsider, the administrative record and court pleadings in the Point Thomson Cases (as that term is defined in Settlement ¶ 1.8) and 3AN-05-12486. Additionally, Walker requests that all correspondence between any member of the Parnell Administration and any WIO relating to the Settlement or a potential settlement of the Court Cases, dated on or after January 1, 2010, be included in the administrative record. As provided by 11 AAC 02.030(d), because public notice was not provided by the Department 30 days in advance of the Settlement, Walker intends to file additional written materials within the longer of 20 days or the term of the stay requested in Part III below. Walker also undertakes this action as a public interest litigant, and consequently requests that the administrative record be prepared at the State's expense. If the Commissioner will not agree to that request, please provide Walker with advance notice before any costs chargeable to him are incurred.

C. A Summary of Certain Terms of the Settlement That Demonstrate it is Not in the Best Interests of Alaska.

In this Subpart C Walker describes his understanding of the Settlement at a high level. Capitalized terms not otherwise defined are meant to have the meaning given them in the Settlement.

1. The Owner Group Will Maintain Most if Not All of the PTU Acreage With Little or No Additional Work Commitments.

The Settlement contemplates a myriad of confusing potential options and outcomes for development of the PTU. Time and time again, however, Exxon has shown it will pursue the smallest work commitment the Department allows. In the Settlement, that appears to be one of two options. The first option is to go forward with the IPS Project, which is the 10,000 barrel per day ("bbl/d") cycling project *already committed to in 2009 to keep two leases.* If that route is taken most, if not all, of Point Thomson will be held in perpetuity by the Owner Group. Walker does not believe that the Department surrendering those additional leases for no work commitments is in the State's best interests.

But of course the Settlement no longer even requires the WIOs to undertake the previously committed to IPS Project. The second option is to Sanction a Major Gas Sale for, but not necessarily build, a bullet line project out of Prudhoe Bay. That will obviate the need for the Owner Group to do any work at Point Thomson, or even connect it by pipeline to other ANS infrastructure, yet will preserve the Owner Group's right to the acreage well into the next decade. Walker does not believe it is in the State's best interests to allow a bullet line from Prudhoe Bay, which itself has sufficient gas for such a project for approximately 125 years, to result in the Owner Group being able to continue to warehouse Point Thomson resources. And when the field is developed, Walker does not believe it is in the State's best interests, given the current available evidence, to allow the Owner Group to blowdown the reservoir without cycling, which under the Department's previous analysis will result in the physical and economic waste of condensates and oil of a value greater than the Alaska Permanent Fund.

A discussion about specific portions of the Settlement related to development options follows:

a. Under Settlement ¶ 4.1.1 the Owner Group agreed as part of the IPS Project to drill the PTU 15 and PTU 16 wells, already completed by 2010, and has the option to put those wells into production at 10,000 bbl/d no later than May 1, 2016 and to construct the liquid hydrocarbon pipeline from the PTU to Badami. This option is the same development project that was previously a firm commitment, delayed from 2014, that the Owner Group made in January 2009 to secure two leases (ADL47559 and 47571).[7] Thus the Owner Group has already been working on this project including the expected 10,000 bbl/d condensate production and 70,000 bbl/d hydrocarbons liquid line that will connect to Badami,[8] only the formerly firm commitment is now an optional one under the Settlement.

b. Also part of the IPS Project, in Settlement ¶¶ 4.1.2 and 4.1.3, the WIOs have the option to drill a Thomson Sand well from the West Pad by May 1, 2017, and to continue permitting an East Pad well.

c. Under Settlement ¶ 4.2.2 the IPS Project commitments are not mandatory. If the Owner Group Abandons these projects by 2015 the Owners still maintain core unit acreage in the 9 leases listed in Area A of Exhibit C through year-end 2019 (and if they have spuded the West Pad well by year-end 2016 they will keep the acreage in the 3 leases listed in Area B of Exhibit C). Further, if between 2007 and year-end 2015 the Owners spend more than $2.0 billion on Point Thomson Development, they will automatically keep the acreage in the 13 leases listed in Area D of Exhibit C also through year-end 2019.

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[7] Commissioner Irwin stated in his approval of the project that the WIOs "have unconditionally committed to bring those two wells on the two leases into production by 2014." Conditional Interim Decision (January 27, 2009) (Exhibit 8). *See also* Transcript of Hearings, Before Commissioner Thomas Irwin (January 12 to 16, 2009) (Exhibit 9).

[8] *See, e.g.,* Testimony of Paul Carson, 3 AN-06-8446CI, Tr. 3149 – 50, 3190 – 93, 3212 – 14 (September 11, 2011) and Testimony of Charles Cicchetti, 3 AN-06-8446CI, Tr. 8444 – 8446 (October 13, 2011) (Exhibit 10).

d. By spending $2.0 billion on Point Thomson Development, the Owner Group, with no firm development commitments, has the right to unitize and maintain some or all of 22 of the 38 leases, that overly the core acreage, through year-end 2019. Since no accounting of the amount spent from 2007 to date was provided in the Settlement, it is unclear if the Owners had met that spending threshold as of the date of the Agreement. However, based upon the fact that the spending amount is back dated, there are no rules for how to do the accounting, the State only gets the information on spending if the IPS Project is Abandoned, and the definition of what goes towards the $2 billion is worded broadly enough to encompass work done since 2007 on various ANS projects outside the PTU or on a gas pipeline project,[9] it can only be assumed the $2 billion threshold will be met as a matter of course.[10]

e. If the WIOs keep their prior commitment made in 2009 to maintain ADL 47559 and 47571, and put the two wells drilled in 2010 into production by year-end 2019, then under Settlement ¶ 4.5.3 the Owners automatically get to keep all or part of the 23 leases now part of the PTU (9 or 12 leases if the $2 billion was not spent depending on if the West Pad well is spuded).[11] Further, because the PTU would now be under production all of this acreage will be held in perpetuity by the WIOs under the habendum clause in Section 21(c) of the PTU Agreement.

f. The WIOs also get to wrap into the PTU and maintain indefinitely additional acreage if by year-end 2019 they expand liquid production by 10,000 bbl/d (and even more acreage if 20,000 bbl/d) or Sanction a Major Gas Sale, or if by year-end 2018 they have a POD for the Brookian formation underlying Area F of Exhibit C. Since all that maintaining the Brookian requires is an approved POD by 2019 under Settlement 4.7, the agreement effectively pushes off any decision on the development of the 5 leases in Area F of Exhibit C for half a decade, at which time the POD process starts over for that acreage.

g. Pursuant to Settlement ¶ 4.5.2 if by year-end 2019 IPS Project Start-UP has not occurred, or a Major Gas Sale Sanctioned, then the Department may theoretically terminate the PTU Without Appeal.

1) However, Settlement ¶¶ 4.4.2, 4.5.1 and 4.5.7 appear to provide if a Major Gas Sale is Sanctioned by year-end 2019 then the PTU is fully reconstituted to include all the acreage except the Brookian in Area F of Exhibit C (which will be separately maintained by simply filing for a POD by year-end 2018). When the definitions of Major Gas Sale and Sanction are reviewed in Settlement ¶¶ 2.16 and 2.28, all that is required for this outcome are

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[9] It is unclear from the Settlement what qualifies as "other work activities" under ¶ 2.19 that count toward the $2 billion threshold, such as funds spent by the Owner Group on projects relating to Prudhoe Bay gas reinjection, the Badami oil system, or in furtherance of a Major Gas Sale (e.g., on the Denali Pipeline Project, Alaska Pipeline Project under the Alaska Gasline Inducement Act, a large diameter or bullet line liquefied natural gas project to tidewater).

[10] Regardless, if the Owners spend less than $2.0 billion they similarly lock up all or part either 9 or 12 of the most productive leases (depending on whether a the West Pad well is drilled).

[11] The exception is that under Settlement ¶ 4.5.3.1 the northern half of ADL 377017 will be released from the PTU.

receipt by the State of corporate approvals and firm transportation service agreements "sufficient to proceed to construction," and necessary regulatory approvals issued, for a "pipeline project having a design through put of more than 500 million cubic feet of gas per day that results in delivery of gas off the North Slope of Alaska." No construction commitments, or even a final investment decision, are mandatory. It is also worth noting that this option does not require development of the PTU given Major Gas Sale Sanction of a project relying solely on Prudhoe Bay gas satisfies these conditions. Yet once a Major Gas Sale is Sanctioned under Settlement ¶ 4.5.1 then the reconstituted PTU is in effect, and the POD process starts over again. It would consequently appear the WIOs, at the end of 2019, having done no work on the field, have maintained the entirety of the unit by getting the paperwork in order to undertake a bullet line or large diameter pipeline project (without any actual commitment to go forward) from Prudhoe Bay. This is notwithstanding a 500 million cubic feet per day off-slope pipeline would not need gas from a source, such as the PTU, other than the PBU for approximately 125 years.

2) It also seems, although the provisions are incredibly difficult to understand and vague, that a Major Gas Sale Sanction or an IPS Project is not necessary to keep the PTU alive past year-end 2019 if before that date an Expansion Project POD is submitted. It appears nothing requires the Expansion Project POD to result in any actual work under the definition of Commit at Settlement ¶ 2.4, so long as if before the Expansion POD is submitted some internal sanctioning has occurred which document an obligation to proceed diligently (sanctioning that can presumably be revoked at a later date). Walker has not yet been able to figure out which acreage survives under an Expansion Project POD past 2019, but the consequence seems to be to start the POD process anew in the post-2020 era.

Thus for little or no consideration beyond the work commitment to produce 10,000 bbl/d of condensates made in 2009 to maintain ADL 47559 and 47571, the State has agreed to allow the PTU to remain in effect indefinitely (with the potential for some acreage contracting out). Alternatively the WIOs can avoid the 2009 production commitment of 10,000 bbl/d but get the paperwork completed to undertake, but not actually commit to, a small or large diameter off-slope pipeline, or submit an Expansion Project POD, and at the end of 2019 restart the POD process on the entire PTU. And of course if the WIOs put the unit into production and Sanction a Major Gas Sale then, as confirmed by Settlement ¶ 4.5.6, the PTU now consists of all the leases, which are held in perpetuity by the 10,000 bbl/d of condensate production committed to in 2009 pursuant to the habendum clause in Section 21(c) of the PTU Agreement.

But the terms of the Settlement go even further.

2. The Settlement Attempts to Contract Around the Department's Regulatory Authority. Settlement ¶ 5.1.3 provides:

> The Parties agree that this Agreement is a contract between the Parties. . . Application of standard administrative processes does not provide any right or basis for the State to alter the terms of this Agreement. DNR discretion and the authority to take action or make a decision regarding Point Thomson may only be exercised by DNR in a manner that . . . does not conflict with the terms of this Agreement.

It appears to be the intent of this provision to make the contractual terms of the Agreement control over the Department's regulations and other state law.

3. **The Settlement Alters the Regulatory POD Process.** Settlement ¶ 4.1.5 provides the IPS Project work plan laid out in the Settlement also acts as a substitute for plans of development otherwise mandatory under 11 AAC 83.343 and PTU Agreement Section 10. Thus rather than annual POD's, there will be no Departmental approvals of development plans until May 1, 2017 at the earliest. Then if a Major Gas Sale is Sanctioned, the process in 11 AAC 83.343 is again replaced with Settlement ¶¶ 4.6.1 and 4.6.4, such that the initial POD after Sanctioning "shall remain in effect for two years following that date and until a subsequent MGS POD is approved." Thus it appears the Department has lost the ability to terminate an otherwise non-producing unit by failing to approve a POD, and contractually altered the regulatory POD process for decades into the future. The Expansion Planning POD under Settlement ¶ 4.6.3 also substitutes an alternative process for that provided in 11 AAC 83.343 with apparently similar consequences if the WIOs go that route to maintain the PTU past year 2019. And not only has the Department forgone POD's through 2017, and contractually altered the regulatory process for later POD's, it has agreed that for most POD disputes, with several carve outs that the Department retains administrative decisional authority over, that the Department no longer has jurisdiction to hear them and instead under Settlement ¶ 5.1 disputes must be resolved by either the Superior Court or arbitration.

4. **The Settlement Results in the Abrogation of the Commissioner's Obligation to Make Findings Under 11 AAC 83.303, Including Leaving the Method of Field Development to the WIOs.** The net effect of the Settlement is that the Commissioner has used a contract to forgo his regulatory obligations to approve issues associated with the PTU. 11 AAC 83.303 provides that before the Commissioner can approve actions related to units he must evaluate and consider the proposed action in light of various factors, and then make particular findings.[12] Under .303(c) these findings must be explicitly made as to all unit approvals, including: "(1) an approval of a unit agreement; (2) an extension or amendment of a unit agreement; (3) a plan or amendment of a plan of exploration, development or operations; (4) a participating area; or (5) a proposed or revised production or cost allocation formula." Yet the sweeping Settlement contains numerous express and implied approvals without these findings, including one or more approvals as to each of items (2) to (5) in the prior sentence. Instead Settlement ¶ 5.8 contains a generic statement, "The Commissioner has determined that entry into

[12] The Commissioner must evaluate and consider that the proposed action will: "(1) promote conservation of all natural resources, including all or part of an oil or gas pool, field, or like area; (2) promote the prevention of economic and physical waste; and (3) provide for the protection of all parties of interest, including the state." 11 AAC 83.303(a). In evaluating those criteria the Commissioner must consider: "(1) the environmental costs and benefits of unitized exploration or development; (2) the geological and engineering characteristics of the potential hydrocarbon accumulation or reservoir proposed for unitization; (3) prior exploration activities in the proposed unit area; (4) the applicant's plans for exploration or development of the unit area; (5) the economic costs and benefits to the state; and (6) any other relevant factors, including measures to mitigate impacts identified above, the commissioner determines necessary or advisable to protect the public interest." *Id.* at 83.303(b).

this Agreement and individual terms and conditions set forth here are necessary or advisable to protect the public interest . . ."

For instance, the Commissioner's obligation to approve development so as to promote conservation, and to prevent economic and physical waste, is a fundamental mandate of the Department.[13] Yet the Settlement leaves the decision as to gas cycling (in terms of whether it occurs, in what volume, and for how long) to the discretion of the WIOs. The Department has not only abrogated it regulatory obligation to ensure the field is developed to promote conservation and prevent waste, but has agreed in Settlement ¶ 5.7 not to oppose the development approach ultimately selected by the WIOs before the Alaska Oil and Gas Conservation Commission ("AOGCC").

It is incongruous that lengthy gas cycling or a gas blowdown can both be in the public interest, particularly in light of the long standing dispute between the Unit Operator and Department as the extent gas cycling is appropriate. Consider that in 2008 the report commissioned by the Department and adopted by Commissioner Irwin into the Alaska Gasline Inducement Act findings found: "Gas cycling delays gas sales, but results in greater ultimate recovery of both liquid and gas hydrocarbons. In contrast, primary depletion as a gas reservoir results in the lowest hydrocarbon recovery of a retrograde condensate reservoir. Gas blowdown for sale can be done at any time after gas cycling and recovery of the hydrocarbon liquids."[14] As to condensates, it was concluded cycling gas for 30 years will result in 86% recovery (420-415 million stock tank barrels ("MMSTB")), 20 years of cycling 76% recovery (370-370 MMSTB), and 10 years of cycling 62% recovery (300-370 MMSTB).[15] It further found that a gas blowdown will result in recovery of only 26% (127 to 156 MMSTB) of the in-place volume of condensates.[16] The same study concluded recovery from the oil rim will also be substantially reduced by blowing down the reservoir early.[17] In fact, under the Department's analysis, a gas blowdown would result in the physical and economic waste of condensates and oil with a value that exceeds the Alaska Permanent Fund.

History, via innumerable past POD's and testimony before the Department, demonstrates that the Unit Operator's preferred method to develop the field is through a less capitally intense gas blowdown, yet the Department has previously concluded such a development approach will result in waste.[18] There is nothing in the Agreement to support a finding that a gas blowdown could now be in the public's interests, particularly if – as the Agreement allows – it does not occur for many years and no cycling project is commenced in the interim. The Settlement does not even provide for what has previously been viewed by the

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[13] 11 AAC 83.303(a).

[14] Summary of Findings for Resource Assessment and Field Development Study of Thomson Sand, in the Point Thomson Area, North Slope Alaska at 3 (May 16, 2008) (Exhibit 11).

[15] *Id.* at 14.

[16] *Id.*

[17] *Id.*

[18] Denial of the Proposed Plans for Development of the Point Thomson Unit, Findings and Decision of the Director, Division Oil and Gas, Under Delegation of Authority from the Commissioner (September 30, 2005) (Exhibit 12).

Department as the only reasonable development scenario: long-term full field cycling followed by a gas blowdown. There is also no support or findings related to why PTU gas is necessary for a Major Gas Sale or why that development alternative obviates the need for cycling given, the way the term is defined in the Settlement, gas from PTU might not be necessary for a small diameter off-slope pipeline for over a century.

5. The Settlement Contemplates Future Royalty Relief Not Available Under Alaska Law. Settlement ¶ 4.8 allows the Owners to submit an application for royalty to relief through to the Department not "pursuant to Alaska statutory provisions . . ." It is unclear what this means.

6. The Settlement Pre-Approves Lease Assignments Such as Exxon's Acquisition of Chevron's Interest. In Settlement ¶ 4.9 the Department agreed to approve any lease assignment requested by ExxonMobil, BP Exploration (Alaska), Inc., Chevron U.S.A. Inc., and ConocoPhillips Alaska, Inc. submitted within 90 days of execution of this Agreement. This clause is presumably to provide advance approval of Exxon's acquisition of the Chevron interests in the PTU, notwithstanding Governor Parnell acknowledged at the press conference on March 30, 2012[19] the State had not been privy to the agreements.

7. Terms of Taxation on Injected Gas Are Established by Contract. In Settlement ¶ 4.16 the Department agreed "that any gas produced from a reservoir within the Point Thomson Unit and injected into a reservoir within the Prudhoe Bay Unit . . . is only subject to tax and royalty one time." This provision attempts to establish terms of future taxation by contract. The Commissioner and Attorney General have also apparently usurped the authority of the Department of Revenue, and given a legal interpretation of 15 AAC 55.151(e) that reinjection of PTU gas into Prudhoe is a non-taxable event under current Alaska law, and made such a commitment without demanding continuing compliance with the affidavit requirements of 15 AAC 55.151(e)(5).

8. The State Waives its Right to Take Royalty In-Value and Substantially Encumbers its Rights Relating to the Taking of Royalty In-Kind. Settlement ¶ 4.16.1 states the State will elect to only take its gas in-kind if there is a completed Point Thomson Gas Development / Prudhoe Bay Enhanced Recovery Project, meaning it waives its right to take the royalty in-value. In addition to committing the State to such items as taking delivery at the PBU unit and bearing the cost of transportation (if the PTU to PBU pipeline is regulated), the Agreement adopts an accounting mechanism for handling the gas once it is injected into the PBU reservoir. Agreeing to the accrual of transportation costs, without detailed treatment of the rate mechanisms, is particularly concerning in light of the history of rate manipulation by ANS producers on oil transportation.

9. Dispute Resolution Is by Methods Different Than Those Provided by Alaska Law. As previously discussed, the Department in Settlement ¶ 5.1 has largely abrogated its regulatory mandate, and contractual rights under the PTU Agreement, to make agency determinations about issues relevant to future disputes involving the Agreement, including for instance relating to PODs. Additionally, arbitration, rather than resolution through the

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[19] Exhibit 2.

Department administrative process or Alaska's court system, is to be the forum under Settlement ¶ 4.2.3 to resolve whether the WIOs failure to perform was excused by circumstances outside their control. The terms of that arbitration are to "be decided following execution of this Agreement." It is also worth noting that factors outside of the WIOs control under Settlement ¶ 4.2.3, which result in their not being deemed to have Abandoned the IPS Project, includes design modifications, litigation by third parties, and permitting and regulatory delays, virtually guaranteeing an excuse to argue work has not been Abandoned and arbitration is required.

II. The Settlement Violates Alaska Law.

In addition to any reasons raised in other Subparts of this letter, Walker asserts the Settlement violates Alaska law in the following manner.

- Insufficient public notice and opportunity for public comment was provided in advance of execution of the Agreement. The Public Notice Clause of the Alaska Constitution provides, "No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law." Alaska Const. art. VIII, § 10. "The Alaska Constitution does not express a requirement of pre-negotiation notice, and instead can be read to require notice before the State commits to an agreement requiring it to dispose of or lease state lands or interests in state lands." *Baxley*, 958 P.2d at 432. In *Baxley*, the Supreme Court held that the State could confidentially renegotiate oil and gas lease terms, in compliance with the Public Notice Clause, if "the public had ample opportunity to comment on the proposed lease amendments before the legislature authorized any binding changes. . ." *Id.* Since the Agreement purports to be binding upon execution, and without legislative approval, and the Settlement was announced without public notice and the opportunity for public input, it violates not only the Public Notice Clause but the very framework of AS 38.05 and 11.383 (among other regulatory, statutory and constitutional requirements).

- The Settlement, including Settlement ¶ 5.8, does not comply with the Commissioner's obligations to evaluate and make the findings necessary to approve this Settlement, including without limitation its terms that approve: (i) the extension and amendment of the PTU Agreement; (ii) the contained plans of development and operations; (iii) the formation, expansion and contraction of participating areas; and (iv) revised cost allocation formulas. 11 AAC 83.303. Those findings should have been sufficiently detailed in writing, orally at hearing, or in another manner that provided sufficient support to allow meaningful judicial review. *Button v. Haines Borough*, 208 P.3d 194, 2000 (Alaska 2009) (an agency's findings must be supported by substantial evidence, which is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.").

- Compliance with the procedures provided by the legislature and by regulation to handle matters involving Alaska's public lands are mandatory and not at the discretion of the Department. The Settlement thus cannot contract around the Department's regulatory authority, either as to its current or future regulatory obligations. *Exxon Corp. v. State*, 40 P.3d 786, 796-97 (Alaska 2001) ("We disagree

with Exxon's first contention that the department can agree to contract terms that violate its regulations. . . To allow such activity would be arbitrary; parties contracting with the department would not be held to the same regulations that non-contracting parties were required to comply with. And the department should never need to contract in violation of its own regulations, because it has the authority to change its regulations so long as the new regulation has a reasonable basis and is within the scope of the legislature's delegation of power to the department."). Without limitation the following portions of the Settlement are improper.

- The Settlement cannot contract away the Commissioner's regulatory responsibilities to, in the future, approve unit actions that must be in the public's interests under 11 AAC 83.303. Among other items, this includes abrogating the Commissioner's obligation to ensure the ultimate method of field development promotes conservation and prevents waste (e.g., the Department cannot allow decisions as to gas cycling to be made at the discretion of the WIOs). Relying on the AOGCC to resolve conservation, waste, and reservoir management issues independent of the Department's administrate process, and without the Department's independent voice before the AOGCC, is not legally permissible and not in the State's best interests.

- The Settlement cannot contract around the POD process under 11 AAC 83.343, either by waiving the obligation to get POD's approved or by altering the POD approval process provided by statute and regulation.

- The Settlement cannot pre-commit to the continuation, expansion or term of the PTU without compliance with the public notice and other requirements of 11 AAC 83.311-.336 and .356.

- The Settlement cannot pre-commit, under 11 AAC 83.351, to the formation of participating areas, including expansion and contraction of the same, before various development commitments are final and contemporaneous data about field and reservoir characteristics are analyzed by the Department. This includes agreeing to the formation of participating areas substantially in advance of the 90 day period (before sustained production) contemplated by regulation.

- The Settlement cannot be used as a mechanism to pre-commit to any current or future amendments to the PTU operating agreement, such as any alternations associated with Chevron's withdrawal, under 11 AAC 83.366.

- The Settlement cannot by contract waive the Department's statutory and regulatory obligations to make agency determinations about issues relevant to future disputes involving the Agreement. That includes having disputes relating to the Agreement decided in the first instance by the Alaska Superior Court. Nor does the Commissioner have the power to waive the Departmental administrative process in favor of arbitration. Similarly, the Settlement cannot provide in its terms or by future agreement to allow arbitration to supplant

judicial review or otherwise alter the standard of judicial review exercised by Alaska's courts.

- The State must approve assignment of Chevron's leases after the sale. *See Baxley v. State of Alaska*, 958 P.2d at 426 n. 6 ("Oil and gas lessees often sell interests in leases without the State's involvement; the State may, however, be required to approve assignment resulting from the sale."). The Commissioner cannot issue a blanket approval, in advance of seeing the parties or terms, of any lease assignment brought to him in 90 days. Practically that means this Agreement is not sufficient to approve Exxon's acquisition and continued retention of Chevron's interest in the PTU.

- The Settlement is too vague and unclear to be enforceable against the State. *George v. Custer*, 862 P.2d 176, 179 (Alaska 1993); *Stenehjem v. Kyn Jin Cho*, 631 P.2d 482, 485 (Alaska 1981) ("A court cannot enforce a contract unless it can determine what it is. It is not enough that the parties think that they have made a contract; they must have expressed their intentions in a manner that is capable of understanding. It is not even enough that they have actually agreed, if their expressions, when interpreted in the light of accompanying factors and circumstances, are not such that the court can determine what the terms of that agreement are. Vagueness of expression, indefiniteness and uncertainty as to any of the essential terms of an agreement, have often been held to prevent the creation of an enforceable contract.") (Quoting 1 Arthur L. Corbin, Corbin on Contracts § 95, at 394 (1963 & Supp.1992) (footnote omitted)). The Settlement is also unenforceable on grounds of public policy. *State v. Public Safety Employees Ass'n*, 257 P.3d 151, 159 (Alaska 2011) ("A promise or other term of an agreement is unenforceable on grounds of public policy if legislation provides that it is unenforceable or the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms.") (quoting Restatement (Second) of Contracts § 178(1) (1981)).

- The executive branch does not have the authority to consider royalty relief pursuant to a mechanism other than that provided by statute. *Baxley*, 958 P.2d at 427 (the Department cannot modify lease terms like royalty without either statutory authority or specific legislative approval).

- The executive branch cannot contract away the State's power of taxation. Alaska Const. art. IX, § 1. The Commissioner and Attorney General also cannot commit the Department of Revenue to an interpretation of State tax law or regulation, nor waive requirements contained therein.

- The Commissioner cannot, employing a non-competitive process, waive the State's right to take royalty in-value, and substantially encumber its rights relating to the taking of royalty-in kind, without the advanced findings and notices contemplated in AS 38.05.183 and 11 AAC 03.010-.070, without approval of the Royalty Board under AS 38.06.050, and without legislative approval as contemplated by AS 38.06.055. It is improper under Alaska law for the Commissioner, in a non-competitive process with no advanced findings or opportunity for public comment, to unilaterally and

potentially indefinitely waive the State's right to take royalty in-value and to so encumber the terms in which the State will take its royalty in-kind.

- This Agreement, which fundamentally alters the regulatory and contractual relationship currently existing between the State and WIOs, must be approved by the legislature under Alaska law. The Commissioner also does not have the power to affect by settlement what he does not have the authority to do by direct action. For example:

    - The Settlement violates the material amendments doctrine by creating a new contract without a new round of public bidding, and without the legislative hearing process the Supreme Court has previously held satisfies the policy considerations behind the rule when amending State oil and gas leases. *Baxley*, 958 P.2d at 434.

    - Alternatively, the State and WIOs could seek approval of the terms of the Settlement by contract through the process established by the Stranded Gas Development Act, AS 43.82 *et seq.* ("SGDA"). As recognized in prior PTU POD's, the WIOs worked with the State to enact the SGDA, which is the current statutory scheme in place to affect such a dramatic overhaul of the State's relationship with the WIOs.[20] But built into the SGDA are a series of procedural safeguards such as the requirement for preliminary findings, notice and comment regarding the contract, final findings, and legislative authorization, as well as a clear mechanism for judicial review. AS 43.82.400 – .440. However, the WIOs, having failed to achieve the goals of the Agreement through the SGDA during the Murkowski Administration,[21] now seek to achieve many of the same goals via a litigation settlement agreement, but without the multi-faceted public process.[22]

- The Settlement is not in any part or in whole in the best interests of the State or its citizens. By signing the Settlement the executive branch abused its discretion and failed to meet its fiduciary obligation to manage Alaska's natural resources for the common good of the public, thus violating the public trust doctrine. Alaska Const. art

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[20] 15th PTU Plan of Development (June 5, 1998) (["T]hree of the PTU Owners (Exxon, BP and Phillips) have worked with the State of Alaska's North Slope Gas Commercialization Team which has recommended that changes be made to the State's tax and royalty structure to improve the economic feasibility of a North Slope gas project. This work culminated in the Governor's introduction of Stranded Gas legislation (HB 393) earlier this year.").

[21] SGDA Interim Fiscal Interest Findings (November 16, 2006) <available at http://www.revenue.state.ak.us/gasline/IFIF%2011-16-06.pdf>; Proposed SGDA Contract (May 24, 2006) <available at http://www.revenue.state.ak.us/gasline/ContractDocuments/ Main%20Documents/ Fiscal%20Contract/ SGDA_Contract_5%2024%2006%20final.pdf> (both documents are incorporated into the record by reference herein).

[22] *Id.* (as a reference, Exhibit 13 contains certain excerpts from the SGDA Interim Fiscal Findings and Proposed SGDA Contract related to the PTU).

VIII, § 2; *Baxley*, 958 at 422 (citing *McDowell v. State*, 785 P.2d 1, 16 n.9 (Alaska 1989)).

III. Walker Seeks the Following Remedies.

For the above stated reasons, Walker seeks the following relief.

A. A stay of this request for reconsideration until 30 days after the Department: (i) assembles, makes public, and incorporates into this record all correspondence between any member of the Parnell Administration and any WIO relating to a potential settlement of the Point Thomson Cases, dated on or after January 1, 2010; and (ii) publishes summaries of the Settlement, including flow charts or other materials, to aid Walker and the public in understanding the terms of the Agreement.[23] The additional 30 days will allow Walker and public time to review the materials and submit public comment and additional materials before the Commissioner decides this request for reconsideration.

B. That the Settlement be approved by the legislature, either under the SGDA or by special legislation similar to the process followed to amend the terms of the leases in the North Star unit (which would include among other items authorization for the Commissioner to contract around his statutory and regulatory duties).

C. That the Commissioner undertake an inquiry, with an opportunity for public comment and best interests findings, regarding whether Exxon should be allowed to acquire and retain Chevron's interest in the PTU. At a minimum the Department should review all the agreements between the WIOs relating to the Settlement and agreements between Exxon and Chevron relating to the purchase, and issue detailed best interest findings. Such a review is not only advisable and even necessary under Alaska law, but it is consistent with past actions of the Department where agreements and realignments between working interest owners impacted the State's interests.[24]

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[23] Specifically, Walker requests an explanation of the various options the WIOs have to keep acreage past year-end 2019, including any associated work and study commitments, which are so complex and vague as to not be understandable even after detailed review.

[24] *See, e.g.*, Findings of the Decision of the Commissioner, Application for Change of Unit Operator, Prudhoe Bay Unit, As Amended, with Errata Changes (June 27, 2000) and related documents (Exhibit 14).

Sincerely,

William M. Walker
Citizen Taxpayer of the State of Alaska

WALKER & LEVESQUE, LLC

Craig Richards
Counsel for William M. Walker

Enclosures as listed on the attached List of Enclosures

INDEX OF EXHIBITS

Exhibits provided on CD or DVD only.

Exhibit 1	Pleadings Dismissing the PTU Court Cases
Exhibit 2	Governor and Commissioner Press Conference (March 30, 2012) Provided on DVD
Exhibit 3	BP, ConocoPhillips and Exxon CEO letter (March 30, 2012)
Exhibit 4	Amended Decision re Reconsider Trial De Novo (Oct. 26, 2010)
Exhibit 5	Decision Following Trial Do Novo (Dec. 30, 2012)
Exhibit 6	[Reserved]
Exhibit 7.1	Testimony of Charles Cicchetti (August 18, 2009)
Exhibit 7.2	Alaska State Legislature House Resources Standing Committee (April 12, 2007)
Exhibit 7.3	Testimony of Roger Marks (October 11, 2011)
Exhibit 8	Conditional Interim Decision of the Commissioner (January 27, 2009)
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Exhibit 10	Testimony of Paul Carson (September 19, 2011) and Charles Cicchetti (October 13, 2011)
Exhibit 11	Summary of Findings for Resource Assessment (May 16, 2008)
Exhibit 12	Denial of the Proposed Plans for Development of the Point Thomson Unit by the Director (September 30, 2005)
Exhibit 13	Excerpts from SGDA Interim Fiscal Findings and Proposed SGDA Contract
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Exhibit 15	News Articles
Exhibit 16	Commissioner Presentation to FEDC (April 10, 2012)
Exhibit 17	Point Thomson Settlement Fact Sheet
Exhibit 18	Point Thomson Settlement Agreement (March 29, 2012)
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Exhibit 20	Commissioner Presentation to the Legislature, Point Thomson Settlement Overview (March 31, 2012)
Exhibit 21	Video of the Presentation of the Point Thomson Settlement to the Alaska Legislature (March 31, 2012) Provided on DVD