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MEMORANDUM June 8, 2012

SUBJECT: Point Thomson settlement (Work Order No. 27-LS1577)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Donald M. Bullock Jr.
Legislative Counsel

You asked for an opinion on a number legal issues related to the settlement of disputes concerning the leases and development of the Point Thomson Unit (PTU). At the time of the settlement, an appeal relating to the issues addressed in the settlement agreement before the Alaska Supreme Court had been argued and was under advisement by the court.[1]

There are two overriding questions relating to the PTU settlement agreement. First, is agreeing to the settlement agreement within the discretion and authority of the attorney general? Second, is the settlement agreement the best possible approach for the development of the PTU? The first question is a matter of law -- the law appears clear that the attorney general has the authority to settle litigation in which the state is a party. The second is a matter of opinion -- whether the settlement agreement is the best of all alternatives, or more subjectively, whether it is the agreement that any one legislator or other current or former officer of the state would make.

At this time, the settlement is final and the supreme court has closed the case on appeal.[2] Dismissal of the administrative appeal is pending in superior court.[3]

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[1] The various cases involving the Point Thomson Unit are listed in paragraph 2.18 of the Settlement Agreement (March 29, 2012). The Settlement Agreement is document no. 3 in the record for the April 27, 2012 meeting of the Senate Judiciary Committee. The list of documents in the committee record is published on the Internet at *http://www.legis.state.ak.us/basis/get_documents.asp?chamber=SJUD&session=27&bill=&date1=20120427&time2=1330* (accessed June 5, 2012).

[2] Oral argument in Case No. S13730 was held on Feb. 8, 2012, the motion to dismiss the petition for review was filed on March 27, 2012, and the court granted the motion to dismiss on March 30, 2012. The appeal information is in the court system's appellate

Authority of the attorney general to enter into settlement agreements.

The forum in which the settlement agreement was presented is significant for determining the relative powers and authority of the attorney general in litigation and the Department of Natural Resources in the administration of oil and gas leases. The Department of Natural Resources and the commissioner of natural resources administer oil and gas leases under the Alaska Land Act (AS 38.05), and in particular, AS 38.05.180, which relates to oil and gas leasing. The duties and responsibilities of the attorney general with respect to litigation are listed in AS 44.23.020(b) and (d).[4] When representing the state in

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database and published on the Internet at *http://www.appellate.courts.state.ak.us/frames1.asp?Bookmark=S13730* (accessed June 5, 2012).

[3] The order dismissing the administrative appeal may have been issued, but the case status is reported as "reopened." The docket published on Courtview lists "Order Upon Dismissal of Appeal" for Case No. 3AN-06-13751CI, dated April 18, 2012. A joint Stipulation for Dismissal of Administrative Appeal was filed on March 29, 2012. The docket is published on the Internet at *http://www.courtrecords.alaska.gov/eservices/casedetail.page.9?x=x3rZcQJPNwZRYwflnD4ouP9W4fw8-kbWZnVk*2aNAnc* (accessed June 5, 2012).

[4] **Sec. 44.23.020. Duties; and powers; waiver of immunity.**

. . .

(b) The attorney general shall

(1) defend the Constitution of the State of Alaska and the Constitution of the United States of America;

(2) bring, prosecute, and defend all necessary and proper actions in the name of the state for the collection of revenue;

(3) represent the state in all civil actions in which the state is a party;

(4) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;

(5) administer state legal services, including the furnishing of written legal opinions to the governor, the legislature, and all state officers and departments as the governor directs; and give legal advice on a law, proposed law, or proposed legislative measure upon request by the legislature or a member of the legislature;

(6) draft legal instruments for the state;

(7) make available a report to the legislature, through the governor, at each regular legislative session

(A) of the work and expenditures of the office; and

(B) on needed legislation or amendments to existing law;

litigation, the authority of the attorney general to settle a case may result in an outcome that may not be possible at the agency level because of the duties and responsibilities granted to an agency by law.

The authority to settle and the authority of the executive branch to control litigation was described by the Alaska Supreme Court in *Public Defender Agency v. Superior Court*:[5]

> Generally, an attorney general has those powers which existed at common law except where they are limited by statute or conferred upon some other state official. AS 44.23.020 indicates that the office of the Attorney General is to function with those powers and duties normally ascribed to it at common law:
>
> '(b) The attorney general shall . . .
>
> (7) perform all other duties required by law or which usually pertain to the office of the attorney general in a state.'[6]
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> Under the common law, an attorney general is empowered to bring any action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state's litigation which he thinks best. This discretionary control over the legal business of the state, both civil and criminal, includes the initiation, prosecution and disposition of cases.
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> When an act is committed to executive discretion, the exercise of that discretion within constitutional bounds is not subject to the control or review of the courts. To interfere with that discretion would be a violation

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> (8) prepare, publish, and revise as it becomes useful or necessary to do so an information pamphlet on landlord and tenant rights and the means of making complaints to appropriate public agencies concerning landlord and tenant rights; the contents of the pamphlet and any revision shall be approved by the Department of Law before publication; and
>
> (9) perform all other duties required by law or which usually pertain to the office of attorney general in a state.
>
> . . .
>
> (d) The attorney general may, subject to the power of the legislature to enact laws and make appropriations, settle actions, cases, and offenses under (b) of this section.
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> . . . .

[5] 534 P.2d 947, 950 (Alaska 1975) (citations omitted).

[6] This paragraph is currently codified as AS 44.23.020(b)(9).

> of the doctrine of separation of powers. Although the Alaska Constitution does not expressly address itself to the doctrine of separation of powers, we have noted that often what is implied is as much a part of the constitution as what is expressed. The state constitution is divided into a number of separate articles. Since Article III concerns the executive branch, it can fairly be implied that this state does recognize the separation of powers doctrine.
>
> Both federal and state courts have consistently and carefully observed the line which divides their branch of government from that of the executive. They have held that the Attorney General cannot be controlled in either his decision of whether to proceed, or in his disposition of the proceeding.

Although *Public Defender Agency* specifically addressed the separation of powers between the judicial and executive branches, similar separation exists between the legislative and executive branches.

The attorney general discussed the relative responsibilities of the attorney general in the litigation situation and the responsibilities of the Department of Natural Resources for land exchanges outside of litigation in a 1981 opinion to Reed Stoops, Director, Division of Research & Development, Dept. of Natural Resources.[7] The opinion states, in part:

> By your memorandum of May 26, 1981, you requested our opinion regarding the relationship between the authority of the Attorney General to settle legal disputes and the statutory authority of the Department of Natural Resources to exchange state land for private land pursuant to AS 38.50. Your request speaks of both 'out-of-court settlements' (which are usually agreements, not filed in court, to settle a legal dispute without litigation) and 'settlements of litigation' (generally stipulations filed in court and approved by the judge to terminate litigation already initiated).
>
> In brief, it is our opinion that the Attorney General has authority unilaterally to settle litigation over title to a given parcel of land. *However, if that settlement involves an exchange of that land for land which is not at issue in the litigation, the provisions of AS 38.50 must be followed.* In addition, any unilateral settlement of litigation by the Attorney General is subject to constitutional constraints and must be in good faith and free of fraud. *Finally, because of legal considerations unique to land, we believe the Attorney General does not have authority unilaterally to settle legal disputes over land in the absence of litigation.*

(Emphasis added.)

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[7] File No. A66-446-81, 1981 WL 38510 (Alaska A.G.) (Oct. 7, 1981).

The settlement of the Point Thomson litigation by the attorney general seems consistent with the authority of the attorney general. In its litigation phase, as opposed to the initial determinations by the Department of Natural Resources, the attorney general has the power to end the litigation by settlement. Regardless of whether one agrees with the form of settlement or not, the settlement seems to be within the discretion of the attorney general.

The settlement agreement describes the way in which the laws applicable to the PTU are to be interpreted in the administration of the unit. For example, although the state generally is to receive royalty oil and gas in kind under AS 38.05.182(a), the commissioner may elect to take the royalty in value; under section 4.16.2 of the settlement agreement, the royalty is to be taken under the described circumstances in kind and the commissioner may not elect to take the royalty in value.

With this background, the following are the questions you presented and my opinions relating to the settlement of the PTU issues.

Has there, in the history of the State of Alaska, ever been a large deal done with the ANS producers, to end litigation or otherwise, without any public process?[8]

A significant example of a settlement with Alaska North Slope oil and gas producers (ANS producers) is the settlement of the royalty litigation in *State v. Amerada Hess*.[9] That case involved the determination of the value of the state's royalty share of oil production, and the settlement ended a dispute that had been ongoing for approximately 18 years.[10]

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[8] I am not sure what you mean by public process. There is public process in the enactment of legislation and the adoption of regulations. For example, the legislature enacted AS 38.05.180, which sets forth the duties and responsibilities of the Department of Natural Resources and the commissioner relating to oil and gas leases, and the department adopted regulations and drafted lease documents under the authority of that section and the general authority of the department to adopt regulations. However, when disputes advance to litigation in court, any public process is subject to court rules, and input from parties other than those directly involved in the controversy may be limited to amicus briefs. Also, because of various statutes relating to the confidentiality of information, such as AS 38.05.035(a) and AS 43.05.230, information critical to issues under consideration may not be available to the public. If public process means oversight of executive action by the legislature, the power of the legislature may be limited by the doctrine of separation of powers under which the legislative power is granted under art. II, sec. 1, and the executive power is granted under art. III, sec. 1, Constitution of the State of Alaska.

[9] Case No. 1JU-77-847 Civ.

[10] The Office of Management and Budget summarized the history of the Amerada Hess royalty litigation in the context of using the Amerada Hess settlement proceeds to pay the

Other settlements relating to oil and gas pipeline and marine transport of ANS crude are the 1985 settlement of tariff methodology for the Trans Alaska Pipeline (TAPS tariff settlement) and the Exxon Valdez spill claims settlement agreement.

With regard to the Exxon Valdez oil spill claims settlement, the attorney general described the authority of the attorney general and the governor to negotiate and agree to the settlement agreement on behalf of the state in a letter to Senator Richard Eliason and Representative Max Gruenberg. After discussing the authority of the executive under the separation of powers doctrine and quoting from *Public Defender Agency v. Superior Court, supra*, the attorney general concluded, "It is thus entirely clear that, as an incident of both common law and statutory powers, the Attorney General has the discretionary authority to settle the State's litigation."[11]

The opinion expressed in the letter to the legislators seems consistent with *Public Defender Agency v. Superior Court* and the statutory authority to settle cases in AS 44.23.020.

Can the commissioner abrogate his mandate to ensure the development option (e.g., cycling[12] versus gas blow-down[13]) chosen by the working interest owners is in the

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debt service on bonds for capital projects financing for FY 2006. *Amerada Hess Royalty Oil Dispute and Settlement*, Office of Management and Budget (Dec. 15, 2004). The summary is published on the Internet at *http://omb.alaska.gov/ombfiles/06_budget/AmeradaHess.pdf* (accessed June 5, 2012).

[11] Letter from Charles E. Cole, Attorney General, to Sen. Richard Eliason, Chair of the Senate Special Committee on the Exxon Valdez Oil Spill Claims Settlement, and Rep. Max Gruenberg, Chair of the House Special Committee on the Exxon Valdez Oil Spill Claims Settlement, 1991 WL 916843 (April 2, 1991).

[12] "Cycling" is described in Patrick H. Martin and Bruce M. Kramer, *Williams & Meyers, Oil and Gas Law*, Manual of Terms (LexisNexis Matthew Bender 2011) as

> A primary recovery method by which condensate is recovered gas produced from a condensate gas reservoir and the residue gas is compressed and returned to the reservoir from which it was originally produced.

[13] "Blow-down" is described in *Williams & Meyers* as

> A term applied to the commencement of production of gas for sale after the completion of a cycling or recycling operation. The term refers to the reduction of pressure in the formation as a result of the production of gas. Gas royalty becomes payable to royalty owners upon the commencement of the blow-down.

public interest under 11 AAC 83.303? That is, can the commissioner contract around his statutory and regulatory obligations?

Although the commissioner of natural resources (commissioner) may not contract "around his statutory and regulatory obligations," the attorney general may enter into a settlement agreement in litigation that may resolve an issue in a different manner than what the commissioner may have chosen or had the power to accomplish administratively. Once the issues are being litigated, settlement is in the discretion of the attorney general and no longer in the discretion of the commissioner, though the attorney general may consult with the commissioner in the course of negotiating and reaching a settlement. Although the settlement authority rests with the attorney general, the commissioner also signed the settlement agreement, impliedly to express agreement in the terms of the settlement.

Your question includes two options for dealing with gas extracted from the PTU. Under cycling, condensate is removed from the gas and the residual gas is injected into the reservoir from which it was extracted. Blow-down refers to the decline in formation pressure when gas is produced for sale. In other words, the two options are to reinject residual gas with the possibility of extracting the gas for sale in the future or to produce the gas for sale.

The critical time for determining whether gas will be cycled or produced for sale is the end of 2016. Section 1.7 of the settlement agreement addresses the alternatives based on whether or not a major gas sale is sanctioned before the end of 2016:

> If a Major Gas Sale is Sanctioned prior to year-end 2016, the WIOs will begin work on a Point Thomson project associated with that Major Gas Sale. However, if a Major Gas Sale has not been Sanctioned by June of 2016, the WIOs have committed to begin engineering of a Point Thomson Expansion Project. An expanded cycling project would result in additional condensate production, totaling approximately 20,000 to 30,000 barrels per day into TAPS, depending on the level of expansion. Alternatively, a project to deliver Point Thomson gas to Prudhoe Bay for injection would significantly increase the rate of condensate production at Point Thomson, serve as a pre-investment for a Major Gas Sale project, and essentially complete installation of the Point Thomson wells and facilities required for a Major Gas Sale. In addition, this option would materially increase production at Prudhoe Bay, and result in enhanced recovery at Prudhoe Bay.

"Major Gas Sale" is defined in sec. 2.16 of the settlement agreement to mean "a large-scale pipeline project having a design throughput of more than 500 million cubic feet of gas per day that results in delivery of gas off the North Slope of Alaska."

The attorney general entered into the settlement agreement to end the PTU litigation. Part of the settlement agreement addresses the cycling and blow-down options and the situation in which each option could be exercised. Since the options are part of the settlement agreement, the option is subject to the agreement and is no longer under the purview of the commissioner. This situation is similar to the situation addressed in the opinion by the attorney general to Reed Stoops discussed above in that the settlement agreement was made in the litigation context and within the discretion of the attorney general as the state's lawyer.

Can the commissioner agree to have future disputes as to field development or related to interpretation of the settlement decided in a manner other than the DNR administrative process provided by law (i.e., by original determination by the superior court or by arbitration)?

The attorney general agreed to the terms of the agreement on behalf of the state; the state and the commissioner of natural resources are bound by the terms of the settlement agreement. The settlement agreement is complete and does not require further approval or agreement by the commissioner of natural resources.

The settlement agreement addresses the resolution of future disputes in section 5.1 of the settlement agreement. The introductory sentence in section 5.1 states:

> 5.1 Dispute Resolution. The following provisions *shall apply to this agreement*:

(Emphasis added.)

By its own provisions, disputes relating to the implementation of the settlement agreement are subject to the procedure within the settlement agreement. The resolution of disputes outside of the settlement agreement would continue to be subject to the dispute resolution provisions applicable to a dispute between a working interest owner and the commissioner of natural resources.

Can the commissioner of natural resources, in section 4.9 of the settlement agreement, pre-approve any lease assignment requested by any working interest owner within 90 days? In practical terms, can Chevron be bought out by another working interest owner and the state agree before it sees who bought its interest, the terms, and what impact that has on the PTU operating agreement?

Section 4.9 states the agreement by the state to approve lease assignments within 90 days after the effective date for tracts identified in Exhibit B to the settlement agreement. Because the state already agreed to approve the lease assignments in the settlement agreement, the assignments are not subject to review or other action by the commissioner outside of the terms of the settlement agreement.

Not being privy to conversations between the attorney general and the commissioner of natural resources, one may not know what work has already been done on the lease assignments and the extent to which the settlement agreement can be reasonably implemented on this point. One would hope that the attorney general negotiated a time-frame that was adequate for the commissioner to take the actions necessary to approve the lease assignments.

Can the state, through a non-competitive process, waive its right to take royalty in value and so encumber its rights relating to the taking in royalty in kind (under the option related to reinjection of PTU gas into the Prudhoe Bay Unit without royalty board and legislative approval?

Actually, the default is for the state to take oil and gas royalty in kind and not to take it in value. AS 38.05.182 addresses royalty on the state's natural resources:

> **Sec. 38.05.182. Royalty on natural resources.** (a) Any royalty provided for in AS 38.05.135 - 38.05.181 may be taken in kind rather than in money if the commissioner determines that the taking in kind would be in the best interest of the state. *However, royalties on oil and gas shall be taken in kind unless the commissioner determines that the taking in money would be in the best interest of the state.*
>
> (b) The commissioner shall submit a determination to take royalty in money to the legislature at the first opportunity during a current session or, if the legislature is not in session, at the next regular session. The legislature, within 60 days or by the adjournment of the session, whichever comes sooner, may revoke the determination by concurrent resolution.

(Emphasis added.)

Section 4.16.2 of the settlement agreement addresses taking royalty in kind:

> Royalty on Point Thomson Gas Development / Prudhoe Bay Enhanced Recovery Project Gas. If the WIOs Commit to and complete construction of a Point Thomson Gas Development / Prudhoe Bay Enhanced Recovery Project, then, upon Project Start-up, the State, as authorized by the Point Thomson leases and applicable State law, *will elect, for the period prior to Project Start-up of a Major Gas Sale, to take in-kind the State's royalty share of gas* produced from the Point Thomson Unit when produced into the gas pipeline from Point Thomson to Prudhoe Bay referenced in Paragraph 2.21(i).

(Emphasis added.)

Section 4.16.2 has the effect of excluding the royalty-in-value election and makes the election that is the general rule under AS 38.05.182(a). When the royalty gas is taken in

kind, the disposal of the gas is subject to AS 38.05.183, relating to the sale of royalty, and the advisory duties of the Alaska royalty oil and gas development advisory board under AS 38.06.

Note that, under section 4.16.2.2 General Terms, the state may take its royalty gas for sale or other use, or the royalty gas may be injected into the Prudhoe Bay unit reservoir to enhance the production of liquids. If injected into the Prudhoe Bay unit reservoir, the state maintains ownership of the royalty gas received from the PTU.[14]

Does the settlement require legislative approval under the Stranded Gas Development Act or under the logic of *Baxley v. State*?[15]

The settlement agreement is not a contract developed under the Stranded Gas Development Act (AS 43.82). Therefore there is no contract to submit to the legislature for approval under AS 43.82.435. The settlement agreement settles litigation and is subject to court acceptance and approval, which apparently has already been received.

Baxley involved a citizen-taxpayer challenge to an amendment to the royalty provisions for leases in the Northstar Oil Field that was negotiated by the commissioner of natural resources and approved by law. The Department of Natural Resources and BP Exploration (Alaska), Inc. (BP) negotiated a change in royalty terms that eliminated the net profit share provision, established new royalty rates, allowed the state to terminate (without litigation) the leases if BP did not begin development within a certain time period, and committed BP to employ Alaskans in the construction and operation of the field.[16] The legislature authorized the amendment of the leases as negotiated by the commissioner in 1996.[17]

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[14] I am not sure how the state's PTU royalty gas will be taken from the Prudhoe Bay unit reservoir when gas in the reservoir is produced. An agreement with the working interest owners in the Prudhoe Bay unit may be needed to allocate gas between the state's royalty interest in Prudhoe Bay gas, PTU royalty gas effectively stored in the Prudhoe Bay unit reservoir, the gas of PTU working interest owners, and the share of gas owned by the Prudhoe Bay unit working interest owners.

[15] *Baxley v. State*, 958 P.2d 422 (Alaska 1998).

[16] *Baxley*, at 427.

[17] Ch. 139, SLA 1996.

The court summarized the plaintiffs allegations in *Baxley* as follows:[18]

> This case began in January 1997 when Clyde Baxley and the Republican Moderate Party brought a declaratory judgment action against the State and John Shively, Commissioner of the Department of Natural Resources. Baxley and the Party (collectively Baxley) asserted that they had citizen-taxpayer standing to challenge the Act. Baxley argued that the Act violates the Uniform Application Clause and the Public Notice Clause of the Alaska Constitution, and that it violates competitive bidding statutes and laws proscribing material amendments to competitively bid contracts. Baxley also contended that the Commissioner lacked the authority to modify the leases.

The court did not disturb the superior court's findings that the plaintiffs had standing,[19] agreed with the superior court that the Uniform Application Clause[20] did not apply,[21] agreed with the lower court that the legislation approving the lease amendments was not special legislation,[22] and found that the commissioner did not exceed the commissioner's broad statutory powers to negotiate amendments to the leases.[23] The court also found that the public notice requirement in art. VIII, sec. 10, was not violated "because the public had ample opportunity to comment on the proposed lease amendments before the legislature authorized any binding changes[.]"[24] Finally, the court found that the rule against material amendments to state contracts through a public bidding process did not apply to amendments approved by the legislature.[25]

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[18] *Baxley*, at 427 - 28.

[19] *Baxley*, at 428.

[20] The Uniform Application Clause is in art. VIII, sec. 17, Constitution of the State of Alaska:

> **Section 17. Uniform Application.** Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

[21] *Baxley*, at 429.

[22] *Baxley*, at 430 - 31.

[23] *Baxley*, at 432.

[24] *Id.*

[25] *Baxley*, at 433 - 34. Consideration of several issues were not considered by the court because they were not raised in the lower court. Those issues included whether the commissioner violated art. VIII, secs. 8 and 11 of the state constitution by not requiring

Baxley was a court challenge to actions taken by the legislature and the commissioner. Had the PTU settlement agreement been an agreement negotiated by the commissioner of natural resources and approved by the legislature, *Baxley* may have been relevant. However, the settlement agreement is an agreement between adversaries in the context of an appeal of an administrative decision, and the attorney general is authorized by AS 44.23.020(d) to settle cases such as this, subject to the power of the legislature to enact laws and make appropriations.[26]

Although different persons may have negotiated a settlement agreement with different terms, the PTU settlement agreement was negotiated by the attorney general as attorney for the state and presented to the court in the context of the appeal. The plaintiffs in *Baxley* unsuccessfully challenged the authority of the commissioner of natural resources to renegotiate lease terms; with regard to the PTU settlement agreement, negotiating and agreeing to the PTU settlement appears to be well within the authority of the attorney general.

Is the attorney general's authority to enter into a settlement so broad as to include terms that otherwise violate state law? That is, can the attorney general do by settlement what the commissioner of natural resources could not do by direct action outside of the settlement context?

The attorney general has broad authority to settle cases under the authority discussed above. Whether terms of a settlement are in violation in state laws may or not be clear. For example, in section 4.16.2, the settlement agreement provides that the state will take its royalty in kind. Does the provision of the settlement that removes the commissioner's option to take royalty in value violate state law by removing that option?

As in any litigation settlement, a party may give up something the party feels it is entitled to in exchange for something else it wants. A settlement agreement often involves compromises. Whether a provision of the settlement agreement under consideration violates state law may be difficult to determine, based on the broad discretion the commissioner has to manage leases and the broad authority of the attorney general to settle cases. Broad discretion provides flexibility, which may encompass a broad range of settlement alternatives.

BP to forfeit the leases that BP said it would not develop (*Baxley*, at 432 - 33), whether BP anticipatorily breached the lease agreements (*id.* at 433), and that the lease amendments violated the public trust doctrine (*id.* at 434)

[26] I am unaware of a statute that limits the authority of the attorney general to enter into a settlement agreement such as the one discussed in this memorandum. Also, the settlement agreement does not seem to require an appropriation to fund its implementation. If an appropriation had been or will be required, the legislature would have the power to appropriate as it sees fit, subject to veto.

The attorney general appears to have the authority to do by settlement what the commissioner of natural resources may not do under the commissioner's authority. For example, the commissioner of natural resources revoked the leases based on his interpretation of the law and leases, an action that resulted in the appeal and the settlement agreement; the attorney general had the option to negotiate with the working interest owners and reached a settlement to allow the leases to continue, subject to the terms of the settlement. Thus, there was a different outcome from the commissioner's initial action, but both were within the discretion of each state officer.

Where there is broad discretion to act, it is sometimes difficult to define the breadth of the discretion. If there are particular parts of the settlement agreement that you believe were outside of the attorney general's discretion, the options for correction are limited as the settlement agreement is under the jurisdiction of the court. The best outcome from the review of the PTU settlement agreement may be to find a better approach to be exercised in future settlements.

What is the absolute minimum amount of gas that must be moved under the settlement agreement? How does the amount of gas that must be moved under the settlement agreement compare to a major gas sale as defined under the Prudhoe Bay unit operating agreement?

Assuming that the question refers to the amount of gas that must be produced before the state is required to take its royalty share, there is no minimum amount that is specified. Under section 4.16.2, the trigger for the state to take its royalty gas is an event, not a volume of gas. The event is the project startup for the Point Thomson Gas Development/Prudhoe Bay Enhanced Recover Project, when gas is produced into the gas pipeline from Point Thomson to Prudhoe Bay. Under section 2.21(i), the gas pipeline from Point Thomson to Prudhoe Bay is expected to have the capacity "to transport significant volumes of Point Thomson gas in an amount that would position Point Thomson gas for a Major Gas Sale, for injection for: . . . use in repressuring, stimulation of production, and increasing ultimate recovery of Prudhoe Bay oil and for ultimate availability for a Major Gas Sale. . . ." "Major Gas Sale" is defined in section 2.16 of the settlement agreement as "a large-scale pipeline project having a design throughput of more than 500 million cubic feet of gas per day that results in delivery of gas off the North Slope of Alaska."

According to the excerpt of the Prudhoe Bay unit operating agreement presented to the Senate Judiciary Committee on April 27, 2012, and exhibit 5, a major gas sale is an average daily volume of separator off-gas of at least "1,750 MMScf/D,"[27] about three and one-half times the 500 million cubic feet of gas per day volume.

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[27] "MMScf/D" means 1,000,000 standard cubic feet a day. 1,750 MMScf/D means 1,750,000,000 standard cubic feet a day or 1.75 billion standard cubic feet, if my math is correct.

Summary

The attorney general has broad authority to settle cases being litigated by the attorney general on behalf of the state. While there may be different views as to whether each of the issues addressed in the PTU settlement agreement was resolved in the way someone else may have resolved an issue, the attorney general has the discretion to settle all issues of the case within the settlement. The settlement agreement apparently has been adopted by the court and may now be implemented. While the legislature may review the settlement, the settlement agreement may not be amended without the consent of the parties or the approval of the court.

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