

**ALASKA STATE LEGISLATURE
SENATE RESOURCES STANDING COMMITTEE**

July 19, 2016

1:00 p.m.

Anchorage LIO

MEMBERS PRESENT

Senator Cathy Giessel, Chair
Senator Mia Costello, Vice Chair
Senator John Coghill
Senator Peter Micciche
Senator Bill Stoltze
Senator Bill Wielechowski

MEMBERS ABSENT

Senator Bert Stedman

OTHER LEGISLATORS PRESENT

Senator Anna MacKinnon
Representative Dave Talerico, via teleconference
Representative Mike Hawker, via teleconference
Representative Kurt Olson, via teleconference
Representative Dan Saddler
Representative Craig Johnson
Representative Liz Vazquez
Representative Geran Tarr
Representative Cathy Tilton
Representative Andy Josephson

COMMITTEE CALENDAR

PRESENTATION: PLAN OF DEVELOPMENT FOR THE PRUDHOE BAY UNIT

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record.

WITNESS REGISTER

CATHY FOERSTER, Chair

Alaska Oil and Gas Conservation Commissioner (AOGCC)
Anchorage, Alaska

POSITION STATEMENT: Explained AOGCC rulings on allowable offtake of gas at Prudhoe Bay and Pt. Thomson.

ANDY MACK, Commissioner Designee
Department of Natural Resources (DNR)
Juneau, Alaska

POSITION STATEMENT: Spoke to DNR procedures.

PAUL DECKER, Manager
Resource Evaluation Section
Division of Oil and Gas
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Gave an overview of Prudhoe Bay petroleum fields.

CORRI FEIGE, Director
Division of Oil and Gas
Department of Natural Resources
Anchorage, Alaska

POSITION STATEMENT: Described the oil and gas plan of development (POD) for the Prudhoe Bay unit.

MARK COTHAM, Contract Attorney
Alaska Department of Law
Houston, Texas

POSITION STATEMENT: Explained that it is appropriate to request marketing plans from the working interest owners of Prudhoe Bay.

ACTION NARRATIVE

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CHAIR CATHY GIESSEL called the Senate Resources Standing Committee meeting to order at 1:00 p.m. Present at the call to order were Senators Coghill, Costello, Wielechowski, and Chair Giessel.

Presentation: Plan of Development for the Prudhoe Bay Unit

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CHAIR GIESSEL said she wanted to provide the public and members of the committee with an in-depth discussion of the plan of development (POD) for petroleum resources in the Prudhoe Bay unit on the North Slope. The topic has been in the media for the last few months, and letters have been exchanged between the

Alaska Department of Natural Resources (DNR) and the Prudhoe Bay unit operator, which is BP Alaska.

CHAIR GIESSEL explained that a plan of development is required under Alaska regulation and is submitted annually for review and approval. It describes how a resource is going to be developed in the upcoming year. The POD is approved—or not—by DNR. If it is deemed insufficient, DNR can propose modifications. If the operator agrees to the revisions, then the plan of development goes forward. In the case of the Prudhoe Bay unit, DNR has proposed changes to next year's POD, and if the proposed modifications are not accepted by the operator and there is no approved plan of development, the current plan could expire. Under 11 AAC 83.343, no development activity can be allowed without an approved POD.

CHAIR GIESSEL noted that Senator Stoltze and Representative Tarr joined the meeting.

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CHAIR GIESSEL said the letters from the administration have asserted that the Prudhoe Bay unit should have a plan of development for the gas. "I think all Alaskans are aware that we've been developing the oil, but now the DNR is requesting there be a plan of development for the gas." The state is also requiring the companies to provide gas marketing plans, she stated, which is a new policy. The Prudhoe Bay producing companies contend that a plan to develop the gas is premature and that it would violate antitrust laws if they were to share their marketing strategies. She noted that the DNR letters are posted on the BASIS website, and they state that there is a duty to make the gas available from Prudhoe Bay to third party projects on commercially reasonable terms in the absence of a binding commitment to progress to a major gas sale. The companies say this is unprecedented. "We're here to find out more," she said. She added that elected officials represent Alaskans, and she wants to make sure resource committee members understand so that their voice can be heard appropriately, and they can make appropriate decisions should it come down to that.

CHAIR GIESSEL noted that Representatives Talerico and Olson joined the meeting via teleconference.

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CHAIR GIESSEL announced that there will be testimony from the Alaska Oil and Gas Conservation Commission (AOGCC), and she noted that many Alaskans do not know about this commission,

which was established prior to statehood. Its main functions are to prevent waste and to protect the public interest in the production of oil and gas. In 1978, the present commission was formed as an independent quasi-judicial agency of the state, with powers and duties described in statute, including its responsibility to prevent the waste of resources. She then welcomed Representative Josephson to the meeting.

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CATHY FOERSTER, Chair, Alaska Oil and Gas Conservation Commission (AOGCC), Anchorage, said that she has been asked to discuss the rulings that AOGCC made on gas offtake allowables from Prudhoe Bay and Pt. Thomson in anticipation of major gas sales from the North Slope in 2025. There is no regulatory piece for AOGCC in a plan of development; however, because preventing waste and encouraging greater ultimate recovery are part of their statutory mandate, if the AOGCC sees something in a POD that is counter to either of those objectives, "we could then call a hearing of our own motion and pursue something that we didn't like in a POD."

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CHAIR GIESSEL asked who "we" refers to.

MS. FOERSTER explained that she is representing the AOGCC, which is supposed to have three commissioners but now only has two. She noted that she is the chair of the commission and is also the engineering commissioner. Statute requires an engineering commissioner who has at least ten years of petroleum engineering experience. The other commissioner is Dan Seamount, and he fills the statutory requirements of having a petroleum geologist with at least ten years of experience. The statute also calls for a public member with knowledge and experience relevant to oil and gas issues, but that position is currently vacant.

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MS. FOERSTER said there was an existing Prudhoe Bay gas offtake allowable set at 2.7 BCF [billion cubic feet] per day, "but I call that the over-my-dead-body allowable," because it was set in the 1970s when it was thought that Prudhoe Bay would recover 8 billion barrels of oil, and enhanced oil recovery techniques were not well understood. The thought was to get the gas at the same time as getting the oil, but if that first gasline had been built, "we probably would have gotten 8 billion barrels out of Prudhoe Bay, and we would have gotten a lot of gas too, but we wouldn't be meeting here today." There would have been Kuparuk but probably not Nikaitchuq, Oooguruk, Alpine, or "all those

other little satellites that have come on over the years, because Prudhoe Bay would be dead now." Instead, it has produced about 12 billion barrels and has over 2 billion left to produce.

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MS. FOERSTER said she calls it over-my-dead-body, because "we needed to see a specific case for gas offtake with timing and rate and see the analysis of the offsetting oil and gas losses before we could grant an allowable, but we knew that that allowable was based on premises that were no longer accurate."

CHAIR GIESSEL asked her to explain the connection between gas and oil in simple terms for the listening public.

MS. FOERSTER said she will get to that. The Prudhoe Bay operator presented a specific case of a volume of offtake starting in 2025, and AOGCC made a ruling based on that very specific case. She noted that it is the only data that has been presented to the commission, so that is the only scenario that it has made a ruling on. Pt. Thomson has a different set of concerns, but there was no offtake allowable in place for that gas at all, and now there is, and it is 1.1 BCF per day. The bottom line is that the two allowables together provided sufficient offtake to meet the proposed 2025 project.

MS. FOERSTER stated the AOGCC has five statutory mandates relating to oil and gas production: protect human safety; protect fresh ground waters; prevent hydrocarbon waste; encourage greater ultimate recovery; and protect correlative rights, which relates to a landowner stealing someone else's oil and gas. Preventing waste and encouraging greater recovery are the two mandates that are relevant in this discussion. She said that all proven gas on the North Slope of any quantity is at Prudhoe Bay and Pt. Thomson, and there is a lot of it. It has been deemed stranded, as there is no way to get it to a market.

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MS. FOERSTER said since AOGCC is charged with encouraging greater hydrocarbon recovery, it is her job to help see that the gas gets to market. At Prudhoe Bay there is 22 trillion cubic feet (TCF) of gas that the operators say they can recover, and Pt. Thomson has 6 TCF that operators expect can be recovered. Along with encouraging recovery, the AOGCC has a mandate to prevent waste. When gas is taken from an oil field before all of the oil has been produced, some oil will be lost. Taking the gas too soon will cause some of the oil to be lost forever. Taking gas from a condensate field like Pt. Thomson before the

condensate has been recovered will cause some condensate to be left in the ground forever. It is a fact; it is just physics.

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MS. FOERSTER said there are 2.5 billion barrels of oil left in Prudhoe Bay, and that is huge and about same amount Kuparuk has produced in its entire life. There is a lot of condensate at Pt. Thomson, an amount almost equal to the oil that Swanson River has produced since it came on line 50 years ago. This is a significant resource that needs to be protected.

CHAIR GIESSEL asked for a definition of condensate for the listening public.

MS. FOERSTER explained that condensate is a lighter end liquid that is in the gas in a gas reservoir. In a reservoir like Pt. Thomson, it is under pressure and temperature and called a dense fluid. It is not really a liquid or gas, it is kind of in between, but as it comes to the surface, the liquids drop out and it changes to a light oil.

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MS. FOERSTER reiterated that allowing gas to be sold before all of the oil and condensate have been recovered will result in the waste of some liquid, but not allowing the operators and the state to take advantage of what might be the only window to get the gas would not encourage greater ultimate resource recovery, so there are tradeoffs. The people at AOGCC have been studying the effects of gas sales on the loss of liquid recovery since before Ms. Foerster arrived in 2005, and they are convinced that they can trust the technical validity of BP and Exxon's reserve reservoir models. She said, "We've participated with BP and Exxon in running sensitivities on those studies to assist in optimizing both liquid and gas recovery and understanding the dynamics of protecting the oil versus protecting the gas." She said she feels good about the data and the conclusions of AOGCC. From the day that she got to the AOGCC, she thought it would be very difficult for BP and Exxon to convince them to approve major gas sales during her tenure, as she thought it would be further out in the future. "What I've been telling you guys is this: for Prudhoe Bay, later is better, less is better, accelerating production of the oil beforehand is better, and developing and implementing strategies to mitigate those losses once the gas production begins is better." That's just the way it is, she stated. The less gas taken, the slower the damage to the remaining oil. One strategy to mitigate the losses that

"they've been working on for several years" is called gas-cap water injection.

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MS. FOERSTER noted that she has been saying that "the monkey's going to be on Exxon's back to prove to us that blowing down the gas cap is the only feasible way to establish commercial production from Pt. Thomson," rather than cycling the gas back in to keep the reservoir pressure up and allowing condensate to come out. She has said that the operators will get fully behind North Slope gas sales when the timing is right for them, and, in general, when it is right for them, the timing is right for Alaska. She noted a public hearing last August where the Prudhoe Bay owners testified in support of major gas sales from Prudhoe Bay starting in 2025. A few days later, the Pt. Thomson owners testified in support of allowable offtake from that field starting in 2015. On October 15, 2015, AOGCC issued orders allowing offtake at 3.6 BCF per day at Prudhoe Bay and 1.1 BCF per day at Pt. Thomson starting in 2025.

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MS. FOERSTER showed a slide summarizing the important parts of rulings by AOGCC for Prudhoe Bay and Pt. Thomson. In addition to the allowable offtakes that were granted to the operators, the AOGCC put in some caveats. In five years, BP must provide a report on its oil recovery acceleration activities and the results of those activities. "In other words, you've told us that you're going to do all of these things to accelerate oil production so that 2025 will be the right time," and rather than trusting their word, they will have to demonstrate it. "We also asked that they give us some studies on CO2 injection—different alternatives for it—but we gave them approval for that but contingent on the results of those studies." The operators asked for authority to dispose of the CO2, but AOGCC does not have jurisdiction. It is under the EPA [Environmental Protection Agency], and AOGCC does not have primacy for that class of underground injection control, "so we weren't able to give them anything on that except the EPA's phone number." At Pt. Thomson, in addition to the allowables, AOGCC stipulated that prior to the major gas sales, Exxon must demonstrate that cycling is not feasible. Pt. Thomson started up on a pilot cycling project earlier this year, and AOGCC will watch and see how that goes.

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MS. FOERSTER noted that AOGCC can call a hearing to reconsider these decisions, along with any other decisions it makes, at any time. It is a promise to Alaskans that AOGCC will keep an eye on

this and make sure that 10 years later decisions are still the right ones. If things evolve, AOGCC will stay in touch.

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CHAIR GIESSEL asked Ms. Foerster to discuss CO2.

MS. FOERSTER explained that carbon dioxide is a gas entrained in hydrocarbon gas in Prudhoe Bay and Pt. Thomson, and it is not combustible for use as a fuel. It is a waste byproduct. In the Lower 48, the CO2 might be used as an EOR (enhanced oil recovery) product. On the North Slope, the CO2 might be able to be used as an EOR, but it might not, and those are the studies the operators will be performing over the next several years.

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SENATOR STOLTZE asked when the governor will appoint the third AOGCC commissioner.

MS. FOERSTER stated that the governor can appoint the public member any time, "and we're optimistic that he's going to," and three heads are better than two. She noted that Commissioner Seamount's term ends at the end of February 2017 and two commissioners are required for a quorum.

SENATOR STOLTZE observed that the governor could appoint a new quorum and a majority. He asked, "What is the contestability and the "appealability", and what are the standards that you establish and the professional and the legal standards, and is it common to have a ruling contested or appealed?"

MS. FOERSTER answered that it takes agreement of at least two commissioners to make a decision. In the time she has been there, she has never had two against one, but that should not be too surprising, because decisions are based on the laws of physics and the statutes and regulations set out by the state. "There's just no latitude in our decisions." If the science supports it, and it fits into the laws, "it's pretty darn black and white." She said she has not seen a decision that all three commissioners did not come to or a decision that the staff recommended against. If AOGCC makes a decision that the affected party does not like it, the party can request a rehearing, and if they disagree, they can then take it to court.

SENATOR STOLTZE said his observation is that "you might be the one on two to one under certain scenarios."

SENATOR WIELECHOWSKI suggested that economics also factors in somewhat. He asked how much oil is expected to be lost from Prudhoe Bay by allowing a 3.6 BCF offtake, and if there will be loss of oil if the allowable gas offtake is increased. "How do you balance that? Do you do a net-present value for the state?" There must be a financial metric that is used, he added.

MS. FOERSTER answered that she did not recall the exact number for losses, but it is based on a model that is based on assumptions that are likely to change, but it will be in the hundreds of thousands of barrels at Prudhoe Bay. There are over 2 billion barrels left to produce, much of that in the next 10 years, but there will still be enough oil left to have those losses. "This was presented to us as this is, or may be, our only window of opportunity." It was looked at it in terms of losing 28 TCF of gas, so on the basis of heating value, independent of price, 1,000 cubic feet of gas is worth about one-sixth of a barrel of oil. She gave the example of losing 300,000 barrels of oil, which would equate to 1.8 BCF of gas, "and there is a boatload more than 1.8 BCF of gas to be lost."

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MS. FOERSTER said that the ideal scenario would be to not lose the oil but still get the gas. "But we were given one scenario and told that that scenario may be the only scenario, so we evaluated that scenario."

SENATOR WIELECHOWSKI questioned the lack of any economic analysis on the loss of net present value to the state or the internal rate of return for the state or for the industry.

MS. FOERSTER stated that the commission does not make decisions based on economics. ExxonMobil and BP make their decisions on economics, and there are other departments in the state that look at money, but "I don't think you have to have a very high powered calculator to know that this is a good decision as far as present value."

SENATOR WIELECHOWSKI asked if the state has the ability to say, for instance, oil is \$100 a barrel and is much more valuable than the gas, so that somebody will be looking out for the state's treasury.

MS. FOERSTER answered that no one has done that, but that testimony is always welcome at the AOGCC hearings. The oil that the state is selling is the same as the oil that the operator is selling, and if selling 10 extra barrels of oil versus 10 MCF of

gas is better for the operator... "I think the economics are going to be pretty much the same for the oil companies versus the state on the decision to sell the gas or sell the oil in this particular field." This is a case where "if it's good for them, it's good for us."

CHAIR GIESSEL said she reviewed a 1996 opinion from Attorney General [Bruce] Botelho that defines the tension between DNR and AOGCC. Mr. Botelho points out that DNR actually has economists available to make those kinds of determinations.

SENATOR WIELECHOWSKI said it would be important, particularly for Pt. Thomson, where costs are probably very high. The oil companies have said for years that "they want to blow it down; it's too expensive to produce." There can be a huge amount of tension at Pt. Thomson, and there is a need for the state to be advocating on Alaskans' behalf. There will be tremendous variation between what Exxon wants and what the state wants when costs are high but the potential returns to the state are high. The company has projects all over the world, but the potential resource is huge for Alaska. He reiterated the need to look after the state's interest, "and I do think that a lot of times what's good for BP, ConocoPhillips, and Exxon is good for the state, but I think Pt. Thomson is probably a little different."

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MS. FOERSTER said she would like to think the AOGCC is looking out for the state.

SENATOR WIELECHOWSKI noted the lack of economic analysis.

MS. FOERSTER said that is true, but it is still looking out for the best interests of the state, "and we do take input from the people who do have that information."

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REPRESENTATIVE SADDLER noted that the technical determination only comes at leaseholder requests. The state does not keep a running tally of when it might be best to start doing gas offtake versus oil. Is that correct? He asked if the AOGCC determines the best time to take gas only when a leaseholder requests it.

MS. FOERSTER said yes and no. If the operator's plan of development includes something that would create waste or not encourage greater recovery, AOGCC could step in and have a hearing. "If we felt that having a gas offtake was something

that the operator wasn't trying to do and it was time, we could step in and have a hearing about that."

REPRESENTATIVE SADDLER asked if there are policy rules that play into the decision. What if the laws of physics and state law are countered in order to meet a marketing window? Would that override the technical requirements, and who has that role?

MS. FOERSTER said that did go into AOGCC's consideration. There is a time when it takes more gas to fuel the production of the oil than the oil is actually worth, "and that happens way later." But the operator came to AOGCC and said this is a window of opportunity, so for that testimony, AOGCC said, "if you take this window of opportunity, your oil losses will be greater than they would be if you waited longer, but the oil losses will be less than the gas losses."

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REPRESENTATIVE SADDLER asked if a state agency ever asks AOGCC for a calculation, or does it just serve the lease holders?

MS. FOERSTER said AOGCC serves the State of Alaska, but it regulates the industry. It also tries to be helpful in answering questions that are not too onerous.

REPRESENTATIVE SADDLER asked if DNR or anyone from the governor's office has asked AOGCC for recent assessments.

MS. FOERSTER answered no.

SENATOR COGHILL said technology has shifted, and oil has been recovered "probably better and better." He has heard that the gas and water flooding have changed the dynamics of the Prudhoe Bay field and asked if that changes the calculus of when to take oil or gas. The reinjection of gas over time actually has created very, very different dynamics in that field, he added.

MS. FOERSTER answered that technology has changed the timing on when to take the gas. The original ruling was probably sound when it was made, but EOR, or enhanced oil recovery, has advanced. There was not horizontal or multilateral drilling, for example. That is why AOGCC can revisit its decisions over time.

SENATOR COGHILL asked if CO2 becomes valuable.

MS. FOERSTER said that CO2 as an EOR product is well-known, but how it can be used on the North Slope has not been fully evaluated, and AOGCC is asking the operators to evaluate it.

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SENATOR COGHILL asked if the primary use of CO2 would be for oil recovery, but not for gas extraction.

MS. FOERSTER said CO2 is an oil recovery tool.

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REPRESENTATIVE SADDLER said he went to Saskatchewan and saw that CO2 was being sequestered and turned into a value-added product. He asked if there is any commercial value to the CO2 at Pt. Thomson.

MS. FOERSTER said that is not her area of expertise.

CHAIR GIESSEL recapped that gas offtake has been authorized for 2025, and AOGCC will continue oversight to ensure oil recovery is enhanced and waste prevented.

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ANDY MACK, Commissioner Designee, Department of Natural Resources (DNR), Juneau, noted that he has been the designee for 19 days. He introduced other DNR staff who will provide an overview of the Prudhoe Bay reservoir and the plan of development process. He referred to a letter he sent to Chair Giessel telling her he has received all kinds of advice in the last 19 days, but he has been advised not to discuss hypothetical scenarios today or what is happening in the deliberative process.

CHAIR GIESSEL noted an announcement the day before that John Hendrix was appointed as a special advisor to the governor on oil and gas. That role is typically filled by the commissioner of DNR or the director of oil and gas, so she asked which role Mr. Mack will play and if there will be conflict.

COMMISSIONER MACK said he is delighted to have Mr. Hendrix on board as he has a very deep and long history in the petroleum industry. The role of senior advisor is important, and the role of commissioner is different but includes ample authorities and responsibilities. Mr. Hendrix will be a tremendous asset to the state, and he looks forward to working with him.

CHAIR GIESSEL said that the DNR commissioner has the authority to make a royalty-in-kind and royalty-in-value decision on Alaska's resources. Who will make that decision?

COMMISSIONER MACK answered that upstream decisions reside in DNR. Of course, on all major decisions, Alaskans can expect consultation with the governor's office. Mr. Hendrix may be part of that conversation, but he does not know to what extent.

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PAUL DECKER, Manager, Resource Evaluation Section, Division of Oil and Gas, Department of Natural Resources, Anchorage, referred to a slide presentation and the map on slide 3, which shows the Chukchi and Beaufort Seas in the north and the outer continental shelf. Federal management occurs offshore beyond three miles. There is federal acreage onshore, including the National Petroleum Reserve, Alaska (NPRA), which is about the size of Indiana. The area has been somewhat explored, and the most promising results have been in northeastern NPRA, which is an extension of the Alpine pool of the Colville River unit, which is coming into production now. He pointed out the protected Arctic National Wildlife Refuge, Gates of the Arctic National Park, and the Noatak National Monument and Preserve. He noted the Arctic Slope Regional Corporation inholdings within the state-managed Central North Slope lands. The red outlines denote area-wide lease sales, which includes "our" Beaufort Sea area-wide sale, and the North Slope area-wide sale, which is home to really all of the commercially producing oil and gas to date, other than production beginning in the NPRA. There are also the area-wide sales in the North Slope foothills, "so we offer those sales every year, usually in November."

MR. DECKER noted the dark green shapes that represent the extent of the oil accumulations on the North Slope; so Prudhoe Bay and Kuparuk figure prominently there. The red spots represent gas fields, notably the Pt. Thomson accumulation next to the Arctic Wildlife Refuge. There are several oil and gas—especially gas—fields along the foothills. He pointed out "the sparseness of exploration overall" is indicated by black dots, representing about 600 exploratory wells to date. Many areas, particularly away from the existing discoveries, are "really very poorly explored—or sparsely explored."

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MR. DECKER moved to slide 4, a map of the Prudhoe Bay unit. There is an outline of the huge IPA (initial participating area) that is really one oil and gas pool. It is 30 miles east to west

and up to 15 miles north to south, and it occupies most of the Prudhoe Bay unit, "so the IPA is the big dog, obviously, at Prudhoe." It was discovered in 1968, and production started in 1977 with the startup of TAPS [Trans Alaska Pipeline System]. With 38 drill pads and six processing centers, peak production was in 1987 and about 2 million barrels per day.

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MR. DECKER turned to a 3-dimensional schematic of Prudhoe Bay on slide 5, showing different reservoirs at different depths. He said there are 13 different "participating areas (PAs)," which are various reservoirs that contribute to production. The deepest level is the Lisburne limestone and dolomite. The IPA reservoir is above that, and it is sometimes referred to as the Permo-Triassic or the Sadlerochit, Sag, and Shublik formations, but he terms it as the Ivishak formation. Above that is the Kuparuk Formation with a number of accumulations. The western reservoirs are Borealis and Aurora. There are some around the Point McIntyre field, which are referred to as the Greater Point McIntyre Area (GPMA). Moving up to the shallowest reservoir, there is the Schrader Bluff with Orion and Polaris, which are somewhat viscous. The Orion, Polaris, Aurora, and Borealis reservoirs are referred to as the western satellites, and they have one POD. There is another POD for the GPMA area reservoirs, and there is one for the main IPA reservoir.

MR. DECKER turned to slide 6, a diagram of the Prudhoe Bay anchor field that made all the other accumulations commercially accessible. The IPA is really the lion's share of what happens at Prudhoe Bay. All of the other production is important, and he listed the number of wells, producers, and oil in each.

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MR. DECKER showed slide 7, a Prudhoe Bay reservoir cross section. It is very heterogeneous with regard to porosity and permeability, he explained. The lower most portion is lousiest for oil recovery. Slide 8 shows another cross section. Prior to development, the reservoir fluids were simply layered in discreet fluid layers: gas at the top (the gas cap), a thick oil column (oil leg), and then the heavy oil and tar (HOT). So everything was nice and simple, he stated.

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MR. DECKER said the layers are really complicated now, as they were jumbled up by fluid movements. By lowering the pressure in the reservoir, the gas bubble grows and moves down into what used to be the oil column, he explained. He noted the secondary

(water flood) and enhanced (miscible injections) recovery projects. Lean gas injection is another mechanism, which is the injection of the "dry" gas that has been stripped of its condensate back into the top of the reservoir where that gas is "hungry to scavenge additional higher chained hydrocarbon molecules." The lean gas injection is a really big part of the current recovery, he told the committee.

MR. DECKER said the gas cap water injection is best exemplified on the lower right of the slide. It is a huge innovation that the owners have implemented at Prudhoe Bay and not something that has been the standard procedure. It has had substantial impacts. He pointed out oil in the diagram that has not been as effectively swept, which represents a real opportunity to get that next billion or two barrels out of this reservoir. To do that, he said, the energy of the reservoir has to be maintained.

MR. DECKER said the Prudhoe Bay IPA was initially modeled to recover about 9.6 billion barrels of oil. The cumulative production to date is more than 12.3 billion, and currently the estimated ultimate recovery (EUR) is about 14 billion barrels—46 percent greater than the original estimate. "That's a remarkable achievement," he opined. He stated that the WIOs have been diligent, in his opinion, in maximizing oil recovery as mandated by the AOGCC, by using coiled tubing sidetracks, horizontal lateral wells, and well-workover jobs. "We've seen four successive years of increasing activity for those kinds of oil recovery jobs." There has been a recognition and exploitation of the new targets—the opportunities that are created by these complex oil/water/gas distributions in the reservoir. There has also been the optimization of vapor phase oil recovery through the lean gas injection technique. Right now, about 50 percent of the oil liquids recovered from the Prudhoe Bay pool exists in the reservoir in the vapor phase, and that is a very effective mechanism, he stated. There has also been expanded development of the shallower and thinner lower quality Sag River reservoir, and there has been lots of infrastructure and facility maintenance projects over the years that have improved recovery and extended the life by several decades.

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MR. DECKER showed a slide of the Prudhoe Bay timeline. Many projects came on line between 1977 and 1990, and they made it possible that by 1990 the estimate of ultimate recovery went up to 12 billion barrels. He thinks the IPA will eventually be about 14 billion barrels.

CHAIR GIESSEL noted the arrival of Representative Vazquez and Senator MacKinnon.

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CORRI FEIGE, Director, Division of Oil and Gas, Department of Natural Resources, explained that a plan of development (POD) is like an annual checkup with a doctor. Once a PA (participating area) is formed, the POD is required. The POD is submitted annually to the division of oil and gas and outlines the previous year activities and the planned activities for the next year. It allows the operator to demonstrate that the unitized resources are being diligently developed and produced.

SENATOR STOLTZE asked who the patient is and who the doctor is.

MS. FEIGE said she sees it as the discourse a patient would have with a doctor, where the patient comes in and discusses health issues, last year's diet and exercise activities, and the plan for the upcoming year. All operations must be conducted under an approved POD. The regulatory authority is in 11 AAC 83.343, which states that the POD must include a description of the proposed development based on the reasonably available information at the time that the plan is submitted. It must include the long range proposed development that will delineate and produce the underlying oil and gas reservoirs and maintain and enhance recovery once production is established.

2:15:14 PM

MS. FEIGE added that the POD must include any lands that may reside within the unit that are not yet included in a PA. "The POD looks for an explanation of the activities that will be directed at those lands in order to establish PAs and bring that acreage into production, as well." The division looks for details of any proposed operations for the upcoming year, and then it looks for a discussion of any surface locations or proposed facilities that need to be maintained or developed, such as pads, camps, and roads.

2:16:18 PM

MS. FEIGE turned to slide 14 to explain the flow of the POD process. The operator submits its POD at least 90 days before the prior POD expires. The division has 10 days for a "completeness review," where the DNR technical teams determine if anything else is needed. The process is iterative until the division has the required information. After completeness, the POD review begins, and it includes technical sessions looking at the geology, reservoir models, and other data. The process can

continue even if some parts are stalled. "We like to keep it moving, because of that 90-day clock." The division checks if prior commitments were fulfilled, which sometimes they are not. Once, for example, a river flooded drilling sites and impacted production. "We talk about that; we share that information; we amend ... the plan going forward to be sure we're capturing those residual activities and bringing them forward."

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MS. FEIGE said the division then determines if the POD meets the regulatory criteria: Does it protect all parties? Does it promote conservation of all resources? Does it prevent waste? If there are still outstanding issues or a lack of information, it goes back around. If parties are at loggerheads, the process goes into "default and cure," where the division issues a notice of default. There would be a cure period of not less than 90 days, and without resolution for a producing unit, the POD would advance to the Superior Court to challenge the leases.

2:21:00 PM

MS. FEIGE said slide 15 is specific to the Prudhoe Bay participating area. The POD was submitted on March 31, 2016, and the anniversary date is April 1. At the beginning of the year, DNR Commissioner Myers issued a letter to all unit operators saying DNR would seek information related to gas marketing. He also requested more information on facility sharing to learn about maximizing existing facilities and about sharing agreements. That went out to all 62 units in the state on March 24. The unit operator, BP, was then scheduled for the annual technical field review and submitted its POD for 2016. That triggered the 10-day completeness period, and the division determined it needed additional information on infill drilling schedules and gas handling. The division also asked for an expanded discussion of marketing toward a major gas sale. On May 2, BP, as operator and working interest owner, responded to the April 11 letter, and a nuance came to light: BP is a unit operator, but BP, ConocoPhillips, and ExxonMobil are the working interest owners in the leases in the unit. BP notified the division that they do not market unitized resources—it is done by the working interest owners, and each handles its ownership portions separately. ConocoPhillips made the same assertion, and on April 12, the division issued a letter clarifying what the division needed. "We still needed a bit of an update on an old CO2 study and a handling study from 2010, and then, again, we clarified the discussion about marketing information to come in from the working interest owners."

[2:24:57 PM](#)

MS. FEIGE said that on May 17, BP, as working interest owner, responded to the May 12 request and then, as operator, invited the division to have another technical session to look at specifics, and that session did not include any discussion of marketing. On May 20, the division received a response from ExxonMobil on marketing. In all letters, the working interest owners expressed antitrust concerns. Those letters are online and are included in the committee packet. On June 2, the division concluded its internal technical review and notified the commissioner that the division had completed that process. The administration asked the division, again, to request information on marketing, "and we did so in an email to the working interest owners from whom we had heard on the 12th of June." On the 17th, they all responded with concerns about sharing information and antitrust laws and because it was behind the confidentiality agreement of the AKLNG project. On June 30, the division issued the incompleteness letter and called out that the IPA technical plans are complete, but the marketing information is incomplete.

[2:27:48 PM](#)

MS. FEIGE said the January letter from Commissioner Myers provided a new policy direction on capturing the facility-sharing and marketing information, so the conversations with the working interest owners are evolving. The letter requested some very specific information, and typically the agency aims to be very clear and specific in its requests; however, the division has learned that it probably was overly specific, and the conversations around marketing evolved to more general terms. The regulation relates to the long-term development of the resource and, in this case, moving that IPA toward a major gas sale. In summary, the division has an incomplete POD submittal. As it was reported wrongly in the press, she clarified that "we are not at a default point. The POD is still incomplete." The division extended the 2015 POD for the Prudhoe Bay IPA until November 1, and the discussion on marketing for moving the unit to a major gas sale is due September 1.

[2:30:38 PM](#)

REPRESENTATIVE SADDLER said, "I like you Corri," but the requests from your division are extraordinary and unprecedented, and they are very chilling to the oil and gas industry. "What is the endgame here? What are you trying to do with Prudhoe Bay's oil production, and what's the relationship with the governor's plan for a gas pipeline?"

MS. FEIGE said the endgame is to understand where the unit is headed in terms of a major gas sale. What changed for the IPA was the new offtake order, and, "for the state, that now places some real sidebars around a major gas sale at a reasonable time in the future." It seemed appropriate, at the time, to request a discussion about what is being done with the unit to prepare that gas for a major sale.

REPRESENTATIVE SADDLER asked about the implications for the future of Prudhoe Bay and the governor's gas pipeline plan.

MS. FEIGE said she does not speak for the governor, but the division does not set policy. Commissioner Mack may want to respond.

REPRESENTATIVE SADDLER asked, "What's the endgame here?" He said the commissioner has "tremendous responsibility for the future wellbeing of our state and our industry." He asked for the plan, here, and about Alaska's future oil and gas development.

[2:32:45 PM](#)

COMMISSIONER MACK said, with respect to the endgame, "We are in the middle of a process." The letter was sent on June 30, and more will be known on September 1. There is a discussion, and one issue is whether some of the requested information exists in the AKLNG project. He said he prefers to reference the letters.

REPRESENTATIVE SADDLER asked if the division has ever issued other "one-last-chance letters" for a POD.

MS. FEIGE answered that it has not done so during her tenure of the last 15 months. She said that such a letter may have been issued when Pt. Thomson was in dispute.

REPRESENTATIVE SADDLER asked if the POD process is oriented to getting to a yes or a no.

MS. FEIGE answered that the division works very, very hard and diligently to arrive at a good negotiated outcome. It is in the state's interest to continue to see its resources prudently and diligently developed, but at the same time, the division has statutory authorities to abide by. The division cannot approach things through a purely commercial lens. The division has the right and the responsibility to the people of Alaska to ensure that the diligence is taking place.

SENATOR MACKINNON asked if the working interest owners requested any meetings with the division that have been denied.

MS. FEIGE said the owners requested meetings to talk about these issues, and they requested confidentiality under the AKLNG confidentiality agreements. There is, as Senator MacKinnon knows, a firewall between the division as a regulatory agency, and DNR, as the agency involved in discussions around AKLNG. The Department of Law (DOL) advised "those requests and the request for that information be confidential under the AKLNG confidentiality agreement was too specific and was outside of the division's authority. Our authority and our confidentiality regulation is under [AS] 38.05.035, and [the Department of] Law felt that it would be a breach of that firewall, potentially, to hold those conversations under the AKLNG CA rather than under the division's authority. So we opted not-erring on the side of caution on the firewall around AKLNG-to not hold those meetings." The working interest owners indicated that they were not comfortable with having that information specifically under the DNR 38.05 authority. The state decided to err on the side of caution.

[2:37:34 PM](#)

SENATOR MACKINNON said that is not exactly how she read the letters. She saw it as a request to meet on the specifics of the marketing concepts. She said she will reread them, but she felt that the working interest owners were not trying to use the AKLNG confidentiality as a firewall. She asked the three witnesses if they have signed confidentiality agreements with AKLNG.

CHAIR GIESSEL clarified that only Mr. Decker has signed confidentiality agreements.

SENATOR MACKINNON asked about evaluating the benefit of the gas field to Alaskans versus the remaining oil. "Have you done a study, then, to understand the impact of starting to pull the gas off?" She believes that the value of the oil is more significant, "and we have a letter that is okaying some offtake, but there's quite a few bits of information that need to be brought into the light of day for us to actually verify that that offtake can happen. Is that accurate?"

MS. FEIGE said that is accurate. Those studies are due to AOGCC, not the Division of Oil and Gas.

[2:39:47 PM](#)

SENATOR MACKINNON asked if she is saying that there is value in both hydrocarbons, and since January 14, 2016, the division wants marketing information more specific for gas offtake in 10 years.

MS. FEIGE said that is a correct assessment.

SENATOR WIELECHOWSKI asked if DNR has offered to work with the working interest owners to insure that confidential information is protected.

MS. FEIGE said yes. The working interest owners were told that DNR can hold information confidential under DNR's authority.

SENATOR WIELECHOWSKI asked about advantages of working together.

[2:41:17 PM](#)

SENATOR WIELECHOWSKI said that DNR is trying to get information on how the working interest owners are going to market the gas resources. Is that in order to work as a team to market the gas?

MS. FEIGE said no, the purpose for seeking the information under the POD process is to look at the long-range development and production plans for the unitized resources. The division is trying to determine if there is an effort to diligently move toward getting gas to market. She said the unit will roll over, at some point, where it will be producing more gas than oil.

SENATOR WIELECHOWSKI noted that other jurisdictions typically have private landowners. Is it common for landowners to request this kind of information to ensure that work is actually being performed?

MS. FEIGE stated that it is very common here, but she does not have "Outside" information.

[2:42:56 PM](#)

COMMISSIONER MACK suggested getting an answer from DOL.

CHAIR GIESSEL noted that AOGCC does not take economic evaluations of the product into account, but DNR has economists on staff. How do they play into this?

MS. FEIGE said the division has a commercial section, and petroleum economists and commercial analysts examine operations throughout the life of the fields. "We try to stay abreast of how that field is performing [and] where production is at in an

effort to understand when we may be approaching end-of-field life, for example." When it comes to the specifics of the value of oil versus gas, the project economics are fairly critical, because that will provide the variables for modeling and evaluations throughout the life of the field. It is something that the Department of Revenue would use as well.

2:44:44 PM

SENATOR COSTELLO spoke of Ms. Feige's wealth of knowledge and asked if she trusts that the governor is being forthright about his vision for the pipeline.

MS. FEIGE said she does not have interactions with the governor on a pipeline project. There is a firewall.

SENATOR COSTELLO asked about the current operating pipeline that is funding most of the state government. Is the governor being forthright with the public about his vision of the future, considering that this announcement about requesting marketing information was made very late on a Friday and there was not press availability?

MS. FEIGE said the governor is very engaged in this process, and it is a new policy direction. In terms of a sense of trust, her personal opinion is not relevant, "and we certainly, as a division, have worked very hard to run a diligent, transparent process working with the working interest owners and the operators to get the information that is sought in a fashion that fits within the bounds of the POD process."

2:47:24 PM

SENATOR COSTELLO said that regulations are written based on state law in statute books. The POD process is in regulation, and Ms. Feige said these are new policies that seemed appropriate. Where does the division get the authority to request the new information, and is it appropriate?

MS. FEIGE said the regulation looks specifically at long-range proposed development activities of a unit, specific to and including bringing resources and maintaining them in production. The DOL advised the division of implied covenants in oil and gas leases when the new policy direction was announced. Within the DL1 lease that the Prudhoe Bay leases are anchored to, there is a specific call out for production and marketing and sales of unitized resources. It is through that the implied covenants attach to the lease and through the existing regulations. Looking toward the long-term and diligent development of moving

this unit from oil to gas, "then I do believe that that's appropriate. I believe we have a responsibility through the division to the people of the state to know that there is diligence in development of those resources."

SENATOR COSTELLO said she understands the implied duty to market [resources]. She said she thinks it is troubling to Alaskans if there is an implied duty to market. Do you think it should be explicit to show marketing plans?

MS. FEIGE suggested that legal questions on the implied duty to market or produce should be answered by DOL.

SENATOR COSTELLO said, "I find it interesting that multi-billion dollar companies would develop a product with no intention to sell or market it, so I do understand that, and I feel like some of the questions that I've had today have yet gone unanswered."

[2:50:32 PM](#)

CHAIR GIESSEL asked who wrote the letters that have been sent. Was it the Department of Law or Natural Resources?

MS. FEIGE said all decisions of the division are collaborative with other agencies. This letter was drafted by the DOL, and her division made comments and edits.

SENATOR COGHILL said a firewall is important, and that is probably what is being tested. There is a requirement to market from AGDC to DNR, and under this POD, DNR is asking for marketing information, so it looks like the state could put itself in an ethical problem of having information on one hand as a marketer and requiring information on marketing from "these other groups." Should it be there, or should it be thicker? He said that "under 138, we had given a requirement for marketing to DNR." The commissioner also has the authority to "value-switch," he added. The complexity increases with regard to ethical, legal, and antitrust issues, but once this information is given from a POD, he asked if it becomes vaulted or if it is available for other DNR uses.

[2:52:28 PM](#)

MS. FEIGE concurred that the firewall is very important, and part of the evolution is that DNR stepped back from specific, nitty-gritty terms to terms that are more in line with the regulations, which is a discussion of long-range development and what things are needed now to market to help inform the state.

By being less specific, she hopes it "moves us away from issues of potential conflict around that firewall."

SENATOR COGHILL asked how [the information] is kept from decisions that are naturally contradictory to other laws.

MS. FEIGE answered that when DNR receives confidential information under the POD process, it is absolutely held confidential under AS 38.05.035, and because the information was received through a regulatory process, the firewall would separate it from anything on the AKLNG side. The firewall exists for the operator's protection, she added, and that is why there was sensitivity around the meetings under the AKLNG.

SENATOR COGHILL said, "Therein lies the credibility problem for many people. We don't know that those will hold firm. We don't know that the state can do one thing on one hand and one thing on the other without bleeding over information. I think that's going to be a problem as we move forward."

[2:55:58 PM](#)

SENATOR STOLTZE said the senior policy advisor was announced yesterday, and the governor cited a couple of his attributes. The position is on par with Commissioner Mack and Mr. Hoffbeck and others, he explained. One attribute was that he was an advocate of AKLNG. He asked if the advisor will be involved with confidential agreements. "What will be the constraints, professionally, ethically, and all the other parameters you might imagine?"

COMMISSIONER MACK answered that he is currently being advised on his duties as commissioner. He has great staff to advise him. "In particular, where I have a role as a reviewer of [regulatory] decisions, perhaps as a person who would be in a position where issues are reconsidered or there's a request to reconsider, there's a couple of things," and the first is to follow ethics rules and make sure he is well-advised and in a position to rule in such cases. He said he does not know all of the precise answers, because he is assuming that Mr. Hendrix is not subject to a lot of those restrictions and obligations, so, as a senior advisor or cabinet-level position, he might not have those obligations. There are certain decisions—and he hesitates to bring up examples—but there are very specific situations where he is unable to discuss certain issues with Mr. Hendrix, because they are either confidential or deliberative, "and I think he would respect those." There is no doubt that he was brought on board due to his experience as a 35-year industry

engineer. He said, "It's probably going to come down to a case-by-case basis. Having said all that, there's a relationship between some issues that are not regulatory but are developmentally-minded, and we will be working on those for sure."

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SENATOR STOLTZE said the governor described the recent appointee as a relationship person. "I guess if he was in the private sector, he'd be a lobbyist." Relationship is the word the chief executive chose, and that sounds a lot like lobbying. When a person is an advocate for a position—and the governor practically described him as his lobbyist. That was the first term the governor used was "he's a relationship person." He said he thinks people have heard the cautions on concerns such as firewalls. He added that he likes him personally. He was one of the better wrestlers that came out of Alaska, he explained. He is a locally-grown person, too. He has stepped into an abyss, "and there's just cautions, I guess, when the governor hires somebody sort of self-described as a lobbyist."

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REPRESENTATIVE SADDLER said the first paragraph of the regulations for the POD requirements seems to be most at issue. He asked Ms. Feige to define "long range." He asked what level of detail is required, what is missing, and how binding the requirements are.

MS. FEIGE said "long range" relates to the foreseeable future, and it will be different for each unit depending on the projected activities and logical production scenarios. For this IPA POD, "long range" ties back to the offtake that was issued in October by the AOGCC, and that had a loose timeline for moving to a gas-producing unit.

MR. DECKER said that his resource evaluation team looks at "long-range proposed development activities" in contrast to paragraph 3, the annual details in the plan of development, and in many cases, they would be the plans beyond one year.

REPRESENTATIVE SADDLER asked what level of detail is required and what information is currently missing, because certainly the working interest operators and owner understood the obligation they made when they signed a POD.

MS. FEIGE answered that the discussion of marketing a major gas sale is still missing from the Prudhoe Bay IPA. All the other

information is complete. The level of detail the division requested in the June 30 letter is on page 9, and it asks for information concerning marketing plans and activities that will result in the commencement of a major gas sale and to have those explained with specific and measurable items, including any timelines that they could share. The regulation adds the qualification, "to the extent the information is available."

REPRESENTATIVE SADDLER said the terms are subjective, so the governor will have the last word, unless the owners do not plan to litigate every definition. "This is a very big stick that your division is holding over the production of our main economic resource in our state and the largest asset for at least one of the companies operating on the North Slope, so this is authority that's going to come down again to some subjective determinations, and that's concerning to me."

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REPRESENTATIVE SADDLER asked if the request for this information is premature or just right.

MS. FEIGE said the request is framed as the regulation requires, and it asks for information that is available at this time. The division has the responsibility to ensure diligence for the development of the resource. "We need to be informed." She said the discussion is appropriate, and she said to look at the regulation and the requirements for what is appropriate. It is a new policy, and DNR is working on this with other unit operators in the state.

REPRESENTATIVE SADDLER commented that this is a new direction, and it is disconcerting. Because the stakes are so high and because the information from the administration is highly opaque, "that's what gives me, personally, dis-ease, not knowing what the endgame is," and he asked for information on the endgame and how DNR will use its authority. "Its absence will lead to resistance," he opined.

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SENATOR WIELECHOWSKI noted that there is not unanimity in opposing DNR's request for marketing information. He said it is not disconcerting or troubling at all, it is the division doing its job. The Alaska Constitution requires that the state get maximum value for its resources, and the law the legislature put in place, AS 38.05.180, was written because people in Alaska "have an interest in the development of the state's oil and gas resources to maximize the economic and physical recovery of the

resources." He said, "That's what you're doing—that's exactly what you're doing. You're following the constitution; you're following the law that the legislature put in place; you're doing due diligence to make sure the resource is being properly developed. That's your job. Thank you for doing your job." This is what any prudent resource owner in the world would do, he added. The confidential information is to be kept confidential, and it is a perfectly appropriate request that "the vast majority of Alaskans would overwhelmingly support what you're doing."

3:09:45 PM

REPRESENTATIVE JOHNSON said it is always great to follow a good senator. He would like "to take a 30 thousandth view as opposed to digging into the weeds." There are four partners and a pipeline and each own one quarter of the resource, and the state has a decision to market the gas ourselves or partner with them to market it for Alaska. "Until we make a decision how we're going to take our gas or we're going to let them market it for us, all we're doing is asking for a marketing plan from our competitors." He said it is like Walmart asking Kmart for its marketing plan. "They're going to throw you out the door." He said he does not trust the commissioner with confidentiality, because he will be the deputy commissioner in the future, and because of the revolving door where "AOGCC is going to ask somebody that's on the staff, and you can't help but take that knowledge and use it at some point," because it is human nature to use what you know and use it to the advantage of Alaskans. "And that's, quite frankly, your job." He said he has no belief that confidentially will be maintained. If the competitors asked for the state's marketing plan—and the state should have one because it owns a one quarter—he assumes that the state would not be prepared to provide it. He said the state has the right to know, but "we need to take the steps we need to take as a state to say yes we want it in-kind or yes we want a different method of doing it or yes we want to partner with you."

REPRESENTATIVE JOHNSON said that he guaranteed that if the state went to [the operators] and asked them to market it, they would come to the state with a marketing plan. "But until they can identify us as friend or foe, I think you're asking for a hurdle that is just too high for companies." He added that he is not sure this is not a violation of the FCC. "I'm not sure their stockholders aren't going to come unglued if they start sharing marketing plans." He said he does not disagree with the constitution that the state has a right to know, but until the state decides if it is a competitor in marketing gas or not, it

is unreasonable for the state to ask those questions. "Car dealer—anyone—you could walk in and ask for their marketing plan, they're going to tell to pound sand, and I'll be surprised if our partners don't tell you to pound sand."

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SENATOR MACKINNON thanked the witnesses for advancing recovery of hydrocarbons that help provide services to the people who live here. "I firmly believe that the value of what we receive will be determined, possibly, in your hands." She asked if the state is continuing to pursue bilateral marketing agreements with individual working interest owners at Prudhoe Bay.

COMMISSIONER MACK said he cannot discuss it, because it is covered by the confidentiality agreement.

SENATOR MACKINNON noted that it is in documents that are online.

COMMISSIONER MACK said he has been advised to sign a confidentiality agreement for the bilateral meeting he is a party to.

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SENATOR MACKINNON referred to a note from "Kyle" saying, "Discussions should remain confidential, but it's not confidential now, because you've provided us all the information." It is hard to understand what is confidential and not, because some of the documents being referred to as confidential have been provided here today. If Commissioner Mack cannot tell the committee if the state is pursuing a bilateral agreement, she will ask about how to define the state as a regulator different from a competitor. Alaska partners with working interest owners of the Prudhoe Bay unit on the AKLNG pipeline, "and I'm having a difficult time ... separating the Prudhoe Bay and this new requirement from us trying to advance an AKLNG project." She said her problem is Alaska being a bully as a regulator. The state is trying to advance an interest somewhere else as a regulator with information that benefits the state as a competitor when it goes out into other markets. She said she wants to monetize the gas and agrees with Senator Wielechowski. "I want you, on behalf of the people of Alaska, to get the highest value, but when we start competing as I see us moving forward, we're actually competing to the bottom, not to the top." There are group and individual efforts, and she wants to understand how the state is appropriately acquiring information as a regulator without jumping into the competitor role with regard to taking royalty in kind or in gas.

COMMISSIONER MACK said he will check on bilateral conversations and marketing agreements. So far, the meetings he has attended have a confidentiality agreement attached. He opined that Senator Coghill's question was well-informed and thoughtful in pointing out different interests. He noted being very cognizant and working very hard to manage a whole range of information and trying to keep things in their lane. It is very difficult, like Representative Johnson said, people leave service and go to another entity and carry personal knowledge. "It is very hard, in many cases, to distinguish information that you learned six years ago at one employer and five years ago at your next employer." He said he recognizes the challenge. The state is in the middle of a very steady process and will continue through the process.

SENATOR MACKINNON referred to a 151-page document and said "it" is under the gas sales agreement between the state and ConocoPhillips and BP as working interest owners. On page 3, there is a section on bilateral negotiations, and that is where she got her previous question about negotiations. Reading from the document, she said: "During the term of this agreement, provided that DNR, AKLNG project affiliate," which is everyone but ExxonMobil, "is continuing and is not indicated, it is discontinuing its participation in the LNG project..." "To address the possibility that Conoco [or] BP indicates it does not intend to continue with the project..." She added, "Apparently we're pushing Exxon out of here, and Pt. Thomson gas, at least under this gas term agreement, so, when you can let me know, that would be helpful on whether we're entering into those bilateral agreements, but that's where the question came from."

[3:21:03 PM](#)

REPRESENTATIVE TARR referred to the comments about the tension between being a player and regulator and recalled that the topic was part of the discussion of SB 138. She asked the commissioner to review some of those conversations, because there were concerns at that time. She noted that Ms. Feige said that the change is the recent approval by AOGCC for gas offtake, which "puts us in an entirely new world, essentially." She asked: "If we weren't doing what we're doing now with the plan of development to further understand that, what would be other opportunities for us, as the resource manager, to see what that decision means?" She asked if the POD is the only opportunity "where we would be able to see that decision and what it means"

in terms of resource development in the Prudhoe Bay unit, for example?"

MS. FEIGE said the POD process is one tool that the state has for determining how a unit is going to progress. The AOGCC and the study that Commissioner Foerster referenced are touch points along a timeline toward moving to a major gas sale, so they too will be a tool for informing us how Alaska is going there. One study asks if the escalation of liquid production is appropriate. The other is the potential use of CO2 for enhanced recovery. Those two will help determine if Alaska is on the right path and where the development and the diligence is going.

REPRESENTATIVE TARR noted that those two studies are a few years out, so the POD is the best tool Alaska has now.

MS. FEIGE agreed.

[3:23:35 PM](#)

CHAIR GIESSEL introduced the next speaker, Mark Cotham. She noted that Mr. Cotham presented at a joint resource committee meeting in April, 2005, when he was counsel for the Alaska Gas Port Authority. He was introduced as being with a firm that focusses on issues such as failing to develop and other producer royalty claims. At that meeting, he shared that he had been asked by the port authority to provide a review of the legal duties and obligations that the producers have with respect to the Alaska North Slope gas.

MARK COTHAM, Alaska Department of Law Contract Attorney, Houston, Texas, said he has practiced law in Houston for 34 years, primarily as an oil and gas litigator representing both operators and royalty owners. For the last 25 years, he has focused on "failure-to-develop" cases, and he has intensely studied strategies for royalty owners when wells that should have been drilled are not drilled. He noted that he has researched how it can happen that profit-motivated companies do not undertake development that they should. A partial outgrowth of that was the testimony he gave before the Legislative Budget and Audit Committee in 2005, titled Five Common Misconceptions about Producer Control of ANS Gas and its Relation to the Pipeline. Considering the years that have passed, his 2005 remarks have withstood the test of time. The obligations that producers have are not controversial in the oil and gas world. It is not a controversy, and oil and gas companies would not even dispute that they have an implied duty to reasonably market a resource such as gas or oil. In his previous presentation, he

developed the authorities and cases to support that. He noted that people say, "They own the gas, so Alaska is powerless." At that time, he explained that the nature of their ownership interest does not render Alaska powerless. He has spelled out the rights and responsibilities that oil companies have in this context.

MR. COTHAM said he has also testified on behalf of the Alaska Gasline Port Authority before Commissioner [Mike] Menge in connection with the Pt. Thomson cancelation proceeding. He was hired last year by the Department of Law to provide legal advice with respect to the rights and remedies that the state has in oil and gas matters. He is appearing at this meeting today at the request of the DOL, and the specifics are subject to attorney-client deliberative and work-product privileges.

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MR. COTHAM said he is not appearing in any official capacity. Any comments or opinions he has should not be portrayed as necessarily the position of Alaska agencies, but "I have been instructed by the Department of Law to be helpful, cooperative, and try to answer your questions so long as it doesn't impinge on any of the privileges I've described."

[3:29:00 PM](#)

CHAIR GIESSEL asked if it is appropriate for operators to handle the major gas sales on behalf of unit's working interest owners.

MR. COTHAM answered yes; that would be the typical approach. The joint operating agreement forms that are established by the various organizations contemplate that the operator will market the gas of the non-operators.

CHAIR GIESSEL said, "So, you're saying that BP would be marketing the gas in the Prudhoe Bay unit for Exxon and Conoco?"

MR. COTHAM said yes. That would be the overwhelmingly typical relationship in the Lower 48.

CHAIR GIESSEL referred to SB 138, which is the structure the legislature put in place for a gas pipeline project. Since the state could become a marketer of its own gas by taking royalty in kind, how can the state demand gas marketing information from the Prudhoe Bay unit operator and the other two oil companies without triggering antitrust issues?

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MR. COTHAM said he sees two different questions. One has to do with a possible conflict or problem in such a relationship, and the second has to do with antitrust issues. There is a need to be careful not to take information and use it for any wrong purpose, "and I know the state would never want to do that." What is overwhelmingly important, in that context, is a true understanding of the kind of marketing information that is being requested. The information that DNR is requesting is just to get some understanding of the existence of a market and if the producers plan to market the gas when 2025 comes around. If the only plan is dependent on the producers building a pipeline, is there a firm commitment from them to build that pipeline? If the producers are not going to give the State of Alaska a commitment to build that pipeline, can the state obtain some information as to what they are doing to try to get third parties to build it? It has always struck him that the base assumption is that producers will just naturally build the pipeline, but in the Lower 48 "you could probably count on a few hands the number of pipelines that have been built by producers." One thing that the state is trying to do by requesting information, is to obtain either a commitment or the beginnings of a commitment that the pipeline will be built, or, if there is no commitment toward this nine-year ticking clock-. He said nine years is about the time it takes to build a pipeline, so it seems only reasonable for the state to ask for information on a plan.

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MR. COTHAM turned to the topic of antitrust and said he does not believe it represents a legitimate reason to not obtain information on marketing. Antitrust laws, as committee members likely know, are essentially prohibitions against companies colluding to impair competition. There is absolutely nothing about DNR requesting producer information on trying to market this gas-or even to whom-that encourages or involves anti-competitive behavior. A government has a legitimate need for that type of information, and its production would be entirely reasonable, and it would not run afoul of any antitrust laws. Antitrust laws are subject to the rules of reason, and it has been shown by precedence that the producers withholding this basic information is not a valid position at all.

CHAIR GIESSEL said a court would decide that question. "Is there not the opportunity for the companies to have a reasonable expectation of profit in terms of determining their desire market the gas?" Without profit, why force them to produce?

MR. COTHAM explained that with an implied covenant to develop or market, there is a reasonable expectation of profit as a precondition. A majority of states have held that if a sufficient amount of time passes and a producer has not acted, it then becomes the producer's burden of proof to establish that they are acting reasonably. It is no longer the royalty owner or lessor that has to establish that there is a reasonable expectation of profit.

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SENATOR WIELECHOWSKI asked if Mr. Cotham's conclusion that the state has a right to request this marketing information is legal is a minority opinion or if it is crystal clear law.

MR. COTHAM answered that it would certainly be his opinion that it is clear. "I have not read anything in any of the producer responses that were attempting to justify withholding this information that would give me pause to think that DNR is not fully within its legal rights to obtain that information."

REPRESENTATIVE SADDLER asked Mr. Cotham to cite a case in which the duty to produce is clearly outlined in law.

MR. COTHAM said he will provide his 2005 presentation, which has about 40 or 50 such cases. One case, for example, is *Sauder v. Mid-Continent Petroleum Corp.* 292 US 272 (1934). The US Supreme Court explains what is reasonably expected of operators of ordinary prudence having regards for the interests of both the lessor and the lessee. To explore this issue, this document will give a comprehensive contextual discussion. He can provide other information, "but I do not believe that the law that I'm talking about is at all controversial."

CHAIR GIESSEL said she has that document and will distribute it to the committee members.

REPRESENTATIVE SADDLER asked Mr. Cotham to help him understand in what capacity he is speaking.

MR. COTHAM said he is a contract employee of the DOL, and he was made available to testify. He has no prior clearance for his opinions today, so he spoke as a private citizen.

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CHAIR GIESSEL found no further business to come before the committee and adjourned the Senate Resources Committee meeting at 3:41 p.m.

