

**ALASKA STATE LEGISLATURE
HOUSE RESOURCES STANDING COMMITTEE**

February 3, 2017

1:01 p.m.

MEMBERS PRESENT

Representative Andy Josephson, Co-Chair
Representative Geran Tarr, Co-Chair
Representative Dean Westlake, Vice Chair
Representative Harriet Drummond
Representative Justin Parish
Representative Chris Birch
Representative DeLena Johnson
Representative George Rauscher
Representative David Talerico

MEMBERS ABSENT

Representative Chris Tuck (alternate)

OTHER LEGISLATORS PRESENT

Representative Mike Chenault

COMMITTEE CALENDAR

PRESENTATION(S): UPDATE: STATUS OF THE OIL AND GAS TAX REGIME

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

ROBIN OLIVER BRENA, Attorney/Owner
Brena, Bell & Clarkson, P.C.
Anchorage, Alaska

POSITION STATEMENT: Provided a PowerPoint presentation entitled "(Alaskans' Fair Share)" dated 2/3/17, and answered questions.

ACTION NARRATIVE

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CO-CHAIR GERAN TARR called the House Resources Standing Committee meeting to order at 1:01 p.m. Representatives Tarr, Birch, Parish, Talerico, Rauscher, Drummond, Johnson, and Josephson were present at the call to order. Representative Westlake arrived as the meeting was in progress. Also present was Representative Chenault.

PRESENTATION(S): UPDATE: STATUS OF THE OIL AND GAS TAX REGIME

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CO-CHAIR TARR announced that the only order of business would be a presentation by Mr. Robin Brena on the status of the oil and gas tax regime in Alaska.

CO-CHAIR TARR provided brief background information on Mr. Brena.

REPRESENTATIVE BIRCH asked Mr. Brena if he was currently involved in any litigation that involves suing the state.

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ROBIN OLIVER BRENA, Attorney/Owner, Brena, Bell & Clarkson, P.C., said, "I believe that right now, for the most part, I'm aligned, I'm aligned with the state."

REPRESENTATIVE BIRCH further inquired as to any litigation involving the state's industry partners.

MR. BRENA said yes. He added that he represents independent shippers and independent producers throughout Alaska against the majors. He said he would discuss the history of some of the litigation during his presentation.

REPRESENTATIVE BIRCH asked whether an opportunity for equal time for testimony would be afforded to others.

CO-CHAIR TARR said there were four hours of testimony from industry at the meetings on 2/1/17. In addition, during hearings of forthcoming legislation, there will be ample opportunity for invited and public testimony.

MR. BRENA provided a brief personal background and noted that he has represented every drilling company in the state, multiple

independent producers and shippers, and the largest refinery in the state. As an oil and gas attorney for three decades, he expressed his respect for the industry; however, he is an Alaskan first, and the current situation is "out of balance" Mr. Brena described three representative samples of previous legal cases. He advised that the committee has a constitutional duty to distinguish when the interests of Alaska and the major oil producers are aligned, and when they are not.

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MR. BRENA provided a PowerPoint presentation entitled, "(Alaskans' Fair Share)" and stated the presentation represents his personal opinions and he was not representing any client, was not being paid to testify, and has no direct financial interest in whether the legislature adopts or does not adopt his recommendations.

REPRESENTATIVE RAUSCHER pointed out that slide 1 incorrectly identifies Article 8, Section 2, of the Alaska State Constitution.

REPRESENTATIVE JOHNSON asked whether Mr. Brena's political action committee (PAC) is still in existence, and whether he has any other economic associations to disclose.

MR. BRENA said no. Directing attention to his presentation, he said Alaska is not getting enough for its resource (slide 4). The concept of Alaskans' Fair Share begins with the constitutional requirement and duty to the legislature to provide for the maximum benefit of the people of Alaska (slide 6). He provided a quote from former Governor Jay Hammond, and said the original division of the revenue from the state's resources was one-third to the state, one-third to oil, and one-third to the federal government (slide 7).

REPRESENTATIVE BIRCH referred to a slide provided during recent testimony that indicated the state's current share is approaching 46 percent, well exceeding a one-third share [slide not provided]. He pointed out that at [oil] prices below \$45 [per barrel of oil] the state's share is well in excess of that of the industry.

CO-CHAIR TARR noted the aforementioned slide includes royalty and is not reflective of the production tax.

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REPRESENTATIVE PARISH added that the referenced slide indicated net cash flow.

MR. BRENA clarified that former Governor Hammond referred to the state's take as a percentage of gross market revenues; in 2004, state revenues were 27 percent of gross market revenues (slide 8). Further, former Governor Hammond said that the state should begin with a 99 percent severance tax, and lower it until the desired behavior was achieved in order encourage development and meet the state's constitutional mandate (slide 9). He stressed that one-third share is an overall concept, not field- by-field, because some fields are challenged and need support and others produce massive amounts of profits (slide 10). Further, there are many factors of market conditions: when prices are lower, state share should be reduced, when prices are higher, state share should be increased, which would average out to be one-third of gross revenues (slide 11). He directed attention to slide 16 that was provided at an earlier hearing by the Department of Revenue (DOR) indicating - depending on whether the market value of Alaska oil is focused on either Alaska North Slope (ANS) West Coast (WC) price or wellhead value - the state has generally collected between 27 percent and 35 percent.

REPRESENTATIVE TALERICO observed that the constitutional mandate for maximum benefit includes all of Alaska's resources. He expressed his concern for the fair share of future generations of Alaskans, and reminded the committee that previous legislators have had concerns about the potential from exploration and development, and not just about revenue collected in the next few years. He asked whether the state should also consider its future and continue development.

MR. BRENA agreed that should be the state's goal. Regarding Alaska's fair policy, with their two-thirds share, producers have an opportunity to realize substantial profits (slide 13). He emphasized the need for competitive entry into Alaska's basins because market power is held by a few major companies. The state does not attract independent producers for many reasons such as the high cost environment and significant barriers to entry regarding field facilities, transportation, and tankers. Another major barrier to entry is the state's failure to work with the industry to foster competition (slide 14).

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REPRESENTATIVE BIRCH stated previous testimony has indicated that tax credits are bringing new business and investors to Alaska, and questioned whether vetoed tax credits that remain unpaid would "dampen the enthusiasm of this investment in Alaska."

MR. BRENA agreed, and also expressed concern that the state cannot pay the tax credits in a timely manner, thus the state needs to get revenue from the fields that can afford it and give support to challenged fields. However, Mr. Brena cautioned against incenting behavior that is legally required or that the market would otherwise create. He agreed that independents are "being hung out to dry because they rely on ... credits to continue drilling." As an aside, he gave 10 reasons that production tax reform is needed: the industry says it's working; information is not forthcoming; no one understands the tax calculations except the tax director; dissimilar to that of other states; production tax is no longer blamed for job cuts; raising production is not discussed; unbalanced reporting of its impacts; tax incentives for a field that required litigation; projects are the result of two-year-old tax system; state pays for oil to be produced. He returned attention to slides 15 and 16 that indicated declines in revenue: total production tax revenues are down 98 percent and total net [production tax] revenues are down 109 percent, and he concluded that for the first time, through production tax, the state is paying the producers to produce its oil. Further, there is not enough revenue to pay the petroleum credits incurred, and Alaskans are getting less for their petroleum resources than at any time in the state's history (slide 17).

REPRESENTATIVE BIRCH recalled testimony stating that Senate Bill 21 [passed in the 28th Alaska State Legislature] generates more revenue than the previous tax system; he asked whether any of the loss of revenue could be attributed to the fall of the price of oil.

MR. BRENA said yes. He explained that one-half of the decline in revenue is attributable to the price of oil and about \$4 billion is a result of the change in tax rate. He provided graphs that illustrated production tax revenue and net production tax revenue from 2012 to 2016 (slides 19 and 20). He questioned how a production tax can "turn negative."

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REPRESENTATIVE JOHNSON reminded the committee there was a referendum for change [Ballot Measure 1, a referendum to repeal SB 21, failed to pass on 8/19/14] that did not pass, thus the current tax system was affirmed by Alaskans.

MR. BRENA opined the referendum narrowly [lost] in a primary election and would have [passed] in a general election. He returned to the presentation and said the decline in the price of oil does not explain the decline in the percentage of production tax (slide 21). A comparison of Senate Bill 21 and Alaska's Clear and Equitable Share (ACES) [passed in the 25th Alaska State Legislature] is unproductive because both fail under current market conditions (slide 22). Additional graphs on slides 23 and 24 illustrate that if Senate Bill 21 had been in effect during the period of the ACES tax system, the state would have under-recovered \$11 billion, and would not have had savings sufficient for the last five years.

REPRESENTATIVE BIRCH pointed out as owner, the state derives its one-eighth portion, and questioned whether [royalty] is viewed as a part of its one-third fair share.

MR. BRENA said yes. He restated that the cause of the state's fiscal problem is that the petroleum production tax failed. The first solution to the problem is for the state to recover its share of the resource under all circumstances, which is not a partisan issue. The problem is also not caused by government wasteful spending. He provided a quote from former Governor Hammond (slides 26 and 27). The second solution is to reduce spending and ensure that government runs efficiently, although further cuts may have recessionary impacts (slide 28). The third solution is to spend savings only for the public benefit and to refill savings accounts (slide 29). Further, the Alaska Permanent Fund (permanent fund) was intended to permit the state's transition from a petroleum to a non-petroleum economy when Alaska's petroleum resources are exhausted; to achieve this goal the permanent fund needs to grow double its present size (slide 31).

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REPRESENTATIVE BIRCH inquired as to whether Mr. Brena has proposed that the earnings from the permanent fund would support government once the fund has doubled in size.

MR. BRENA opined in order for the permanent fund to achieve its purpose, it will have to grow to twice its current size. In

further response to Representative Birch, he restated the purpose of the permanent fund is to allow the state to transition from a petroleum to a non-petroleum economy without significant economic disruption. He said he was not making a comment on the distribution of the permanent fund.

REPRESENTATIVE RAUSCHER asked for clarification of Mr. Brena's opinion on the purpose of the permanent fund.

MR. BRENA restated the purpose as shown on slide 31. In further response to Representative Rauscher, he said the permanent fund was designed to help answer the question of sustaining the state's economy after the oil is gone.

REPRESENTATIVE TALERICO stated that the University of Alaska Anchorage (UAA), Institute of Social and Economic Research (ISER) has identified transitional ways to use the earnings reserve of the permanent fund.

MR. BRENA opined all of the financial resources of the state should be used; in fact, some money should go to building infrastructure and investment in Alaska.

REPRESENTATIVE TALERICO surmised some of the permanent fund earnings reserve could be made available.

MR. BRENA agreed there are many "levers you can pull" but restated the goal is to ensure that the state receives its one-third share of petroleum revenues based on the market share. In further response to Representative Talerico, he said he did not think permanent fund earnings should be spent to ensure the profitability of the producers.

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CO-CHAIR JOSEPHSON expressed his concern that the state operates under a profit system, but the information presented is based on [a gross tax system]. Not using the earnings reserve when industry is profitable may send a message to "hold out ... [in] a game of chicken." He said the state may have to go to the permanent fund earnings.

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MR. BRENA advised even if the state garners one-third share, it will still be short of revenue; thus getting a fair share is the first solution, and then using the permanent fund "makes a lot

of sense." The permanent fund structure was adopted to protect it from politicians; therefore, the permanent fund and the Permanent Fund Dividends (PFDs) are the last alternative solution (slides 32 and 33).

REPRESENTATIVE BIRCH advised that Alaska is trying to attract oil industry investment and inquired as to how the "recommended changes" will achieve more investment.

MR. BRENA stated that providing \$8 billion or \$9 billion to gain \$1 billion or \$2 billion in investment is not sound public policy; in fact, independents are not working in Alaska because of barriers to entry, market power, and a high-cost environment. He stressed the importance of a competitive marketplace and a free market.

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REPRESENTATIVE BIRCH asked whether the administration has reviewed and supports Mr. Brena's tax changes and revisions.

MR. BRENA said, "I wouldn't characterize that either way, I was invited down to express my opinions and that's what I'm doing."

CO-CHAIR TARR said there has been no coordination in that regard.

MR. BRENA explained he used DOR slides so that the committee can be assured of the facts presented and to avoid arguments over models and technicalities. He continued to other solutions, and pointed out that the state's tax system is a hybrid of a gross and a net tax, but no one present has the sufficient information to properly administer a net system. The industry's profits in Alaska - its actual costs and profits - are unknown to the legislature due to the complexity of the system. Complexity works against the state because the taxpayers are far more sophisticated than the state. For example, much of the audit information is confidential, and audits are five years behind schedule. Therefore, the state must be diligent about all deductions, carry forwards, new oil, credits, and minimum tax and interest, as all of these complexities can be "gamed" (slides 34 and 35). [All] other states have gross systems, and governments in other countries with net systems receive 70-80 percent of the profit from a certain point. In 2020, North Slope gas will convert to a gross system (slide 36). In summary, a gross system is a better approach in its simplicity: base on market prices for ANS crude on the West Coast; set

revenue to one-third share; adjust for field economics and market conditions (slide 37). Directing attention to Alaska's hybrid tax system, he provided two DOR slides that illustrated statewide tax credits and unrestricted petroleum revenue, and statewide tax credits and production tax, from fiscal year 2007 (FY 07) through FY 25 (slides 39 and 40). Also provided was a DOR slide that listed concerns with the current tax and credit system including the impact of a large discovery, eliminating exceptions to the minimum tax, equity between major producers and new explorers, and a volatile and complex minimum tax (slide 41).

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CO-CHAIR JOSEPHSON asked Mr. Brena to reconcile his stance on tax credits, which is aligned with that of the administration, and his published opinions in support of independent, small producers.

MR. BRENA cautioned that without enough revenue the state can't create a balance between fields in order to optimize development. He opined the state should help the independents, work to open markets, and pay the credits that are due with revenue from profitable fields. Although under a net system there is no tax without profit, he said the oil industry bases investment on long-term profitability, not on price spikes, and has made a lot of money over the long term. He questioned why the state has invested \$15 billion in the last three to four years so that the major producers can avoid losing money. Further, the legislature cannot manage extreme market conditions through its tax structure (slide 43). Alaska should not ensure producer profits, pay a statewide tax, not collect its one-third share, or convert the permanent fund to ensure producer profits (slide 44). He stressed that Alaska is in a business position with a partner that withholds financial information (slide 45).

REPRESENTATIVE BIRCH said it would be helpful if the administration could indicate whether it supports Mr. Brena's proposals at this point.

CO-CHAIR TARR pointed out that Mr. Brena is offering his independent opinions and there is no proposal presently under consideration by the committee.

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CO-CHAIR JOSEPHSON recalled an earlier question asked and answered that Mr. Brena was before the committee at the behest of the co-chairs. He then pointed out that DOR estimates the industry's cost to produce oil is between \$41 and \$45 per barrel.

REPRESENTATIVE RAUSCHER questioned whether the presentation was based on a model.

MR. BRENA said no. In further response to Representative Rauscher, he said he has not provided his presentation to any of the major oil producers, although they have made their positions known to him.

REPRESENTATIVE PARISH compared the current tax system to an example of a taxpayer who underreports income and withholds proprietary information, intending to settle an audit favorably in the future.

MR. BRENA stated the aforementioned "is the system you have in place." Returning to the topic of information under the net tax system, he opined the system should be more transparent in order for Alaskans and the legislature to know more about their business partners in developing the state's resources; ignorance is not conducive to creating sound tax policy.

CO-CHAIR TARR relayed that there is forthcoming legislation in this regard and urged the committee to research House Bill 247 [passed in the 29th Alaska State Legislature] for related background information.

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REPRESENTATIVE JOHNSON recalled previous testimony that producers pay 46 percent, and asked for more information. She expressed her concern about seeking one-third fair share with a disregard for the market and impacts to the industry; in fact, the foregoing discussion relates to the budget and how to balance the budget by changing the tax structure. She characterized the discussion as mixing up the budget deficit and sound policies, and questioned whether there is any "good news" ahead for Alaska.

MR. BRENA responded that Alaska's one-third share is just the first step to a solution that does include incentives. Secondly, Alaska should incentivize, as he will discuss later in the presentation, but the concept is the state cannot

incentivize through a paid credit system without first collecting revenue, which is why the budget and sound policies do mesh. Regarding good news, he said there are amazing petroleum reserves in the state awaiting proper management.

REPRESENTATIVE BIRCH asked how the evaluation of the Trans-Alaska Pipeline System (TAPS) changed after it was reassessed by the court.

MR. BRENA answered that at one time the assessed value of TAPS was between \$3 billion and \$4 billion, the State Assessment Review Board (SARB) value was \$4.3 billion, and the court decisions ranged between \$10 billion and \$12 billion; ultimately, the case was settled through an arrangement with the owners at a "complicated" \$8 billion.

REPRESENTATIVE BIRCH surmised that at \$8 billion, and with a flat 20 [mill rate] property tax rebated to some cities along the route, there is an addition of approximately \$160 million to the tariff component.

MR. BRENA further explained that one issue associated with the legal case that is still outstanding are \$377 million in supplemental assessments that were disallowed by the Federal Energy Regulatory Commission (FERC) and are not included in the current rate.

REPRESENTATIVE BIRCH questioned whether the cost of property taxes along TAPS does not get calculated as a part of the cost of transporting oil.

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MR. BRENA responded:

... You don't get to go backwards when you ... under-recover, and collect from future shippers what you didn't collect from the prior shippers. ... Ratemaking is projective in nature, so when you put a rate in effect you're estimating costs going into the future. ... And that's the way it works, and if there is a rate element that you think there is uncertainty in, ... then you have to come forward and put your shippers on notice that that isn't your permanent rate, that that rate element may vary, and engage the regulator in that process so it could be adjusted out so that you're charging the right shipper for the

right movement. So, it was held that they didn't, they decided to roll the dice and gamble, and their taxes went up and they didn't take the appropriate steps to ensure that they would be included in rates.

REPRESENTATIVE WESTLAKE returned attention to slide 46, and observed that municipalities are struggling for money. He asked whether all states have a nondisclosure clause in this regard.

MR. BRENA said he was not qualified to respond to that question. He opined that if one is in business with an industry one should be informed, and there is no barrier to the state [providing taxpayer information to municipalities] legally. Leaving the topic of information in the net tax system, he turned to different kinds of deductions, such as field, for operating and capital, transportation, for pipeline and marine, and loss carry forward (slide 48). As previously discussed, deductions are shielded through confidentiality designations and are on the rise because of the net tax system. His experience suggests that the state should be diligent in its audits and he gave an example of tariff overcharges on TAPS (slide 49). Further, for an integrated major producer, cost centers are profit centers because the major producers make money on TAPS and tanker transportation, yet deduct these as costs from production tax. He stressed that the aforementioned strategy is known and explains how the early recovery of TAPS tariffs lagged behind because of the over-collections of TAPS transportation rate. In addition, the owners of TAPS have collected and earned \$4.5 billion to cover their \$2.5 billion obligation to dismantle TAPS at the end of its useful life: an over-collection of their demolition, removal, and restoration (DR&R) estimate by \$2 billion. If refunded, over \$0.5 billion of the DR&R fund would go to the state. Mr. Brena pointed out that the owners have drained their capital investment from TAPS due to their over-collection in early years and the DR&R fund, yet under common rate principles, the state is unable to capture either. He dismissed the idea that the owners of TAPS will leave the state because they can continue to operate TAPS and produce from the fields, but if they go out of business they will "have to pay a massive amount of money, and it's the value of that money that's going to keep them operating even in the negative." He then provided two DOR slides illustrating increases to marine costs and the TAPS tariff (slides DOR Tax Division, Revenue Sources Book (RSB) Fall 2016, pages 109 and 110).

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CO-CHAIR TARR asked whether any of these particular matters have been litigated, for example, the over-collection of tariff.

MR. BRENA stated FERC requires the owners to maintain a running total of DR&R collections and earnings at their pipeline regulated utility rate. He said the owners have unrestricted access to the DR&R fund, and their return on equity is two or three times that of a utility, thus the DR&R "pot" provides a "massive economic benefit". He restated that costs are sometimes profit centers due to over-collection (slide 52).

CO-CHAIR TARR asked for supporting documents related to this topic that will then be made available to the committee.

CO-CHAIR JOSEPHSON questioned whether the remedy for over-collection is found in Congress or Juneau.

MR. BRENA responded that FERC delayed DR&R refunds to "the end of the line" and the state was opposed to refunds "and its own financial interest, as it often has been in these cases" and provided an example. He questioned why the state has instigated a net tax system with one of the highest cost operators in the world. The effect of the aforementioned deductions has been to reduce production tax and thereby reduce the size of the permanent fund (slides 52 and 53). Mr. Brena said he is not suggesting raising taxes on the entire North Slope, but only for the fields of Prudhoe and Kuparuk, two profitable legacy fields, and he provided information that illustrated producing oil - under 2016 price conditions - from the Prudhoe Unit is profitable (slide 54). He concluded that collecting "a little extra" from Prudhoe and Kuparuk will provide the state sufficient revenue to support government and to create incentives for the marginally challenged fields. Slide 55 illustrated the costs of production using a production tax of 33 percent of gross from the Prudhoe Unit. However, he offered that slide 55 creates a controversial issue because he revised the pipeline tariff to \$0.63 due to litigation that is currently underway, and that the variable shipping cost of a barrel of oil through TAPS is 7 percent of the tariff, but the owners have already recovered their investment and capital.

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REPRESENTATIVE BIRCH asked to review the "Stickel Report."

MR. BRENA offered to provide any source materials. Turning to the topic of new oil, he questioned why the state provided

incentives to a company to develop a field that it was legally compelled to develop: Point Thomson should not be designated new oil (slide 56). Further, the minimum tax should be hardened for all fields, and raised on Prudhoe and Kuparuk because greater Prudhoe Bay production is 281,000 barrels per day and Kuparuk production is 103,000 barrels, of which 22,000 are from the satellites, totaling about 74 percent of total production. A 1 percent change in the minimum tax results in an additional \$75 million in revenue, and an increase on Prudhoe Bay and Kuparuk would represent 74 percent of the additional benefit; therefore, the minimum tax should be raised on Prudhoe and Kuparuk for revenues to pay the unpaid tax credits to the independents (slide 57). Turning to the topic of credits, he advised that credits should be paid in a timely manner and independents should have economic parity. Further, credits should be reduced unless demonstrated as necessary to develop a marginal field, not because required by law, or if likely to be achieved by the marketplace (slide 58). On the topic of interest on underpaid revenues, he said the current tax structure is a system that encourages gamesmanship, underpaying and litigation; in addition, audits should be resourced and completed within one year, and the interest on underpaid revenues should be raised (slide 59).

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MR. BRENA provided a summary of his recommendations under a net tax system: require public reporting on the financial performance of the producers; simplify the net tax system; resource and require timely audits; amortize capital field expenses over depreciation life and not each year; fix transportation deductions to prevent litigation; eliminate or reduce loss carry-forwards; eliminate or reduce production under the new oil designation, including Point Thomson; harden the minimum tax and raise it for Prudhoe and Kuparuk; pay outstanding credits to ensure economic parity for independents, but withhold incentives when behavior is otherwise legally required; adjust interest structure on underpaid petroleum revenues (slides 60 and 61). Mr. Brena urged the committee to help Alaskans get a fair share in a sustainable and fair way (slide 62).

CO-CHAIR TARR pointed out that source information is included on slide 64.

REPRESENTATIVE PARISH inquired as to whether there would be a standard to determine at what point a field becomes an elephantine field such as Prudhoe.

MR. BRENA said there is no question that Prudhoe and Kuparuk are massive fields. In further response to Representative Parish, he estimated the value to the state of lawsuits in which he has participated to be greater than \$10 billion.

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REPRESENTATIVE BIRCH read a quote he attributed to the commissioner of the Department of Revenue [document not provided]. He asked for a response from the witness and also that the committee formally request a response from the administration on the proposals put forth before the committee.

MR. BRENA restated that his proposition is this: in periods of low oil prices, the state can take less revenue if, when oil prices increase, state revenue also increases. The concept is one-third over time, not one-third at any point in time. The present system under-collects in good and bad times; however, under the ACES system, the state accumulated wealth during times of high prices.

CO-CHAIR TARR, in response to Representative Birch, noted that the request for a response from the administration could be submitted through her office, or through his, and shared with the committee.

REPRESENTATIVE BIRCH restated his interest in hearing the administration's stance on the foregoing recommendations.

CO-CHAIR JOSEPHSON directed attention to DOR slide page 16 [presentation slide 12], pointed out since 1978 Alaska has received \$403 billion at the wellhead - which is 35 percent - and inquired as to whether this is the one-third amount sought.

MR. BRENA said no. He clarified that the one-third share that should be the goal of the legislature is one-third of the gross market [value]. Wellhead value is after [producers] take deductions for marine and transportation, which in economic terms are inflated costs.

CO-CHAIR JOSEPHSON recalled that in 2009 and 2010, the state got at least a 40 percent to 70 percent share, which may be "the nature of this profit beast." If prices were high, there would

be debate by legislators comparing ACES and Senate Bill 21; however, there is no debate because prices are not high.

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MR. BRENA observed that the state is in a recession and is under-collecting revenue to which it is entitled. He cautioned against living on savings and the permanent fund instead of actual income, and urged the committee to act by increasing the petroleum tax. He said, "There has never been a period in which we have so under-recovered our petroleum tax"

CO-CHAIR JOSEPHSON asked whether any other states use a gross system that includes stair step progressivity.

MR. BRENA said he would provide that information.

CO-CHAIR JOSEPHSON questioned whether the state should require a plan of approval so DNR could look at financing, the play, and the viability of a prospective development.

MR. BRENA opined a plan should also be public information; for example, at Prudhoe Bay there is no opportunity for real damage to commercial interests, but still there is secrecy. Further, public funds should not be spent on hidden information.

CO-CHAIR JOSEPHSON stated Mr. Brena has previously spoken of two systems that assessed a gross tax in the legacy fields, and a net tax, with assistance in newer fields.

MR. BRENA said he did not. Although a gross system is preferable, he surmised that cannot be achieved; however, to improve the existing system, he recommended raising the minimums, which has the effect of creating a gross system during periods of low prices.

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REPRESENTATIVE TALERICO stated Mr. Brena has recently written that the current tax rate is insufficient for harvesting behavior and production. Of course, evidence has shown that there is a recent increase in production after a 14 years; further, along with an increase in production, there are new discoveries at Smith Bay, Pikka, and Willow. He asked "Do you see any upside in this, with these, our ability to go out and explore and find these major fields and increase our production after a 14 or 15 year slide ...?"

MR. BRENA said yes, there is positive news, and questioned whether it is causable-related to state policies. He opined that finds are decades in the making and cannot be credited to a two-year-old tax program; the 3 percent "uptick" was predicted based on market conditions, along with a production level of between 500,000 and 550,000 barrels of oil. These predictions were based on information available before the passage of Senate Bill 21. Mr. Brena noted that the finds were there, but the companies "in our basin" are harvesters, and what is needed are independent companies that explore and drill. In the lifecycle of a petroleum basin, the first companies working there make major investments and a lot of money; the following industry needs support to be successful. Finally, he advised that the production from elephantine fields levels out and continues for decades, as in, for example, Prudhoe and Kuparuk.

REPRESENTATIVE TALERICO asked whether the drop in the price of oil was predicted.

MR. BRENA said no.

REPRESENTATIVE JOHNSON inquired as to the purpose of the presentation and supported Representative Birch's request for testimony from the administration in this regard. She also requested a copy of Mr. Brena's source "Diapering the Devil." Further, she asked whether a bill is forthcoming.

CO-CHAIR TARR responded that testimony today and during recent meetings "was an educational exercise" to aid new legislators in their understanding of an oil and gas bill.

REPRESENTATIVE JOHNSON stated her interest in hearing more presentations from different perspectives.

CO-CHAIR TARR assured the committee that any forthcoming bills will be heard fully, and encouraged members of the committee to request additional testimony from others. She said the committee would hear from the administration and cautioned that some invited testifiers charge fees.

CO-CHAIR JOSEPHSON added that the Legislative Budget and Audit Committee has hired consultants.

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ADJOURNMENT

There being no further business before the committee, the House Resources Standing Committee meeting was adjourned at 3:10 p.m.