

HB

850



HB 850
Alaska State Legislature
Senate

JUNEAU, ALASKA

February 27, 1976

Senator Chancy Croft
President of the Senate
Alaska State Legislature
State Capitol, Pouch V
Juneau, Alaska 99811

Representative Mike Bradner
Speaker of the House
Alaska State Legislature
State Capitol, Pouch V
Juneau, Alaska 99811

RE: Interim Report of the Joint Gas Pipeline Impact Committee

Dear Mr. President and Mr. Speaker:

Please consider this to be a letter of transmittal of the Interim Report of the Joint Gas Pipeline Impact Committee existing pursuant to H.B. 258 "The Gas Pipeline Impact Committee", Chapter 170 SLA 75. I request that this letter of transmittal, together with the report, be read into the appropriate Journal in each house.

As an aid to the interpretation of the Interim Report, I submit the following as being my understanding of the sense of the Committee:

1. The Committee does not intend to suggest that the Commissioner of Natural Resources or the Royalty Board enter into unreasonable agreements with prospective purchasers. It is the sense of the Committee that Alaska should indicate that it is a "willing seller" of a portion of its gas and is seeking a "willing buyer" on terms which will reserve as much gas as possible for future use to meet Alaska's internal domestic and other needs. The Committee would expect the executive to negotiate the best possible agreement. Understanding, that when such an agreement is negotiated, it may or may not be acceptable to the Legislature. It may be that the executive will negotiate the best possible agreement, at the same time recommending against its implementation on the basis that too little is received by the State and too much given by the State. We believe that it is imperative, however, in the conduct of the people's business, that such a tentative agreement be made public and its merits debated.
2. We do not wish to tie our negotiator's hands by quantifying the word "substantial" as used in paragraph #7 in the Committee's findings, and paragraph #1 of the Committee's recommendations.

3. The Committee does not suggest an arbitrary time deadline for our executive negotiators. We do point out, however, for the agreement to be finalized, legislative approval is necessary and a special session should be avoided if possible.
4. We do not intend in any manner to preclude negotiations for use of royalty gas within the State of Alaska and the further exploration of petrochemical and domestic uses. The major thrust of the Committee's recommendations is based on the belief that a Trans-Alaska pipeline is essential for future domestic and petrochemical in-state use options of North Slope gas.
5. Pursuant to other action by the Committee, the following have been introduced by the respective Rules Committee by request:

SCR 85/HCR 107	"Relating to the Impact on Alaska of a Trans-Canada Gas Transportation System"
SB 685/HB 848	"An Act Making a Special Appropriation to the Department of Natural Resources for the Purpose of Conducting Negotiations with Prospective Purchasers of North Slope Natural Gas and Providing for an Effective Date"
SB 686/HB 850	"An Act Relating to Waste of Oil and Gas and Providing for an Effective Date"
SB 687/HB 849	"An Act Relating to the Leases of State Land for Oil and Gas into taking of Royalty Gas from them and Providing for an Effective Date"

6. Finally, and most importantly, our recommendations are based on the facts and circumstances as they exist today.

The situation may change at any time rendering the presently recommended strategy inappropriate. For example, it has been suggested that the Federal Power Commission may conduct allocation proceedings nullifying contractual sales commitments. Gas may be more or less deregulated. The recent request of the President for authority to make the final route decision subsequent to January 1, 1977 may effect the political climate. It may be determined, as has been suggested by some, that neither the Trans-Alaska nor the Trans-Canada line are economically feasible at this time.

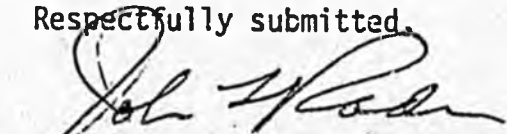
The recommendations of the Committee rely strongly on the advice of our consultant, Mr. Rush Moody, recently Vice-Chairman of the Federal Power Commission. The strategy may only be appropriate if the Federal Power Commission closes the certification hearings in May according to its present schedule and further certifies one route based on the precedents, principles, and considerations customarily employed in past certification proceedings admittedly more limited in scope and of much less national significance.

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The opportunity to use royalty gas to accomplish our public purposes as we perceive them may be lost unless we have substantially negotiated possible sale terms and are ready to move if and when the time arrives - which may be very soon.

Respectfully submitted,



Senator John Rader, Chairman
Gas Pipeline Impact Committee

JR/kb

INTERIM REPORT
OF THE
JOINT GAS PIPELINE IMPACT COMMITTEE

This Committee, through public hearings and staff investigation, has become convinced that immediate action by the State of Alaska is essential if the citizens of this State are to receive maximum benefit from the State's natural gas resource.

The Committee will issue a full and complete report on its findings and recommendations at a later date, but is impelled to submit this interim report to the Legislature and the people of the State of Alaska because of the urgency of the present situation.

The Committee finds and concludes the following:

1. A federal decision authorizing the transportation of North Slope natural gas across Canada would be inimical to the interests of the State of Alaska. The State's resource would be drained, its people denied access to a premium fuel and raw material, its work force deprived of employment opportunities, and productive economic growth would be thwarted.
2. A federal decision authorizing the transportation of North Slope natural gas across the State of Alaska to an open port will serve the best interests of the State.
3. The level of benefits, and burdens reasonably to be expected by the State as a consequence of any decision on a North Slope gas transportation system are of such magnitude that the routing decision must be regarded as critical to the future of the State. Action to secure a Trans-Alaska routing must be pursued as expeditiously as possible; no reasonable step should be left untaken.
4. The position of the state as owner of a one-eighth royalty in natural

gas and natural gas liquids produced from State-owned lands on the North Slope creates an immediate opportunity for effective State action which can assist in securing a Trans-Alaska transportation system.

5. Affirmative, aggressive action by the Governor, the Commissioner of Natural Resources, the State Royalty Board, and the Legislature with respect to the State's royalty gas is imperative.
6. Effective use of the State's royalty gas, to serve the best interests of the State, requires:
 - a. The State must elect to take its royalty share of natural gas and natural gas liquids in kind.
 - b. The State must commit a portion of its royalty gas to purchasers who will assist in securing approval of a Trans-Alaska transportation system, and who will thereafter utilize such a Trans-Alaska system.
7. Present levels of natural gas demand in Alaska permit a commitment of a portion of the State's royalty gas to purchasers outside the State: while every effort must be made to retain a substantial part of Alaska's gas for present and future in-state needs, it is in the overall best interests of the State to offer for sale outside the State, a substantial portion of the State's royalty gas to purchasers who can, and will, assist in securing authorization of a Trans-Alaska transportation system.
8. Those persons and firms interested in the construction and operation of a Trans-Alaska transportation system can materially alleviate State unemployment problems, and the State should, in striking a bargain for the commitment of State resources to a Trans-Alaska

system, secure appropriate commitments for the hire and training of Alaska residents in the construction and operation of such a system.

9. Finally, the risk that non-action by the State, or delayed action by the State, will cause the selection of a Trans-Canadian routing, and the risk that the State will lose substantial benefit of its natural gas resource are so great, it is the sense of this Committee that State action must not be delayed.

BY REASON OF THE FOREGOING, IT IS THE RECOMMENDATION OF THIS COMMITTEE THAT:

1. The commissioner of Natural Resources and the State Royalty Board should undertake immediate negotiations with interested out-of-state purchasers to reach definitive sales and/or exchange agreements covering disposition of substantial portions of the State's royalty gas on the best obtainable terms.
2. The Commissioner of Natural Resources and the State Royalty Board should undertake immediate negotiations with natural gas transporters involved in the proposal for a Trans-Alaska system to reach definitive transportation agreements covering the State's royalty gas sold for out-of-state use, and the State's withdrawal of the unsold portion of its royalty gas from the system for in-state use; appropriate commitments should be obtained with respect to hire and training of Alaska residents.
3. The arrangements and agreements so negotiated should be presented to the Legislature for ratification prior to the end of the Second Session of the Ninth Legislature to avoid, if possible, a special session.
4. The Legislature should hold itself ready for immediate consideration

of and prompt action on, the recommendations of the Commissioner and Board.

5. Such arrangements, contracts, and agreements as are negotiated by the Commissioner and Board and approved by the Legislature should be incorporated into the pending applications for a Trans-Alaska transportation system, presented to the Federal Power Commission by the appropriate transporter-applicant, and approval thereof obtained in the pending Federal Power Commission proceedings.
6. The Legislature should adopt SCR 66 and further seek the active cooperation of all owners of North Slope gas in support of the Trans-Alaska pipeline route.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

ROYALTY OIL AND GAS DEVELOPMENT ADVISORY BOARD

JAY S. HAMMOND, GOVERNOR

11TH FLOOR, STATE OFFICE BLDG.
POUCH M - JUNEAU 99811

March 22, 1976

The Honorable Nels Anderson
Chairman
House Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. Anderson:

The following comments on H. B. 850 were prepared by the Division of Oil and Gas and given by me as testimony before the House Resources Committee on March 20, at Commissioner Martin's request.

We believe that the inclusion of the words "economic waste" is being put in the wrong place in the statute. Instead, we recommend that Section 1 read: AS 31.05.170 (11) is amended to read 'waste' means, in addition to its ordinary meaning, "physical and economic waste" and includes" ...

The bill as proposed would indicate that subparagraph (j) is physical waste and that obviously is not the intent of the additional definition.

Existing Statute AS 31 does not cover economic waste per se. However, studies by the Interstate Oil Compact Commission legal committee has concluded that "there is in law and in fact a necessary relationship, a legitimate relationship, between economics and conservation". A copy of pages 75 and 76 from the 1964 report on economic waste is included for your information. You will note that the Interstate Oil Compact Commission advises that no state has a statute which defines economic waste.

Since economic waste could occur on a lease or in a pool, individual attention and hearings must be held for each economic waste determination. Although economic waste could occur at several locations simultaneously each lease must be treated as a separate entity for consideration and large scale studies and investigations as some have visualized are not appropriate for this consideration. Consequently, if it is necessary to determine if economic waste exists or conditions exist that cause economic waste this must be done on a pool by pool basis. We believe that the knowledge, ability and expertise within the present Division of Oil and Gas is sufficient to make these determinations.

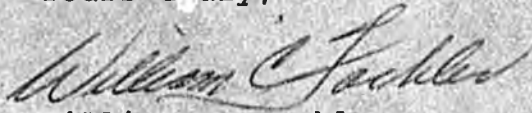
Nels Anderson

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March 22, 1976

The additional definition might prove to be helpful at some time in the future but as you were advised sometime ago we do not feel it is necessary at this time. If, in fact, it is ever needed it will be helpful to have it in the statute and we can visualize no additional expenditure or monetary impact resulting if it is included.

Yours truly,



William C. Fackler
Executive Director

Enclosure

FROM LOCC LEGAL RESEARCH RECEIVED 9/18/67

equitable allowables are established the incentive to produce in a wasteful manner is gone. Unitize a pool and there is little need for further regulation.

Thus, whether or not a conservation statute expressly includes reference to the protection of correlative rights, the duty to protect such rights exists either to render the statute or regulation valid or as a means to prevent waste.

In fact, the earliest conservation case to reach the Supreme Court of the United States^{36/} sustained the Indiana statute in question primarily as an incident to the protection of correlative rights.

On the other hand, one of the few instances where an oil and gas conservation statute has been held invalid^{37/} was in a case where a well-spacing statute prohibited the drilling of a well without giving to the landowner an adequate substitute means of recovering or receiving his fair share of the oil and gas from the common pool on the grounds that it infringed upon his constitutional guarantees. The court said that the right to pool voluntarily his interest with adjacent tracts to form a drilling unit was not an adequate substitute right.

The statutes of 17 states, namely, Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Kansas, Mississippi, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, and Texas, in express terms grant the regulatory agencies broad powers to protect correlative rights.

The statutes of the states of Alabama, Arkansas, Colorado, Georgia, Mississippi, Nebraska, and North Carolina, define waste to include the abuse of correlative rights.

While the statutes of Iowa, Louisiana, Michigan, Oregon, and Tennessee do not use the term "protect correlative rights", they contain numerous requirements and provisions with respect to the prevention of drainage, injury to others, assuring an owner his just and equitable share, or similar provisions which are but another way of describing the protection of correlative rights.

The statutes of Alaska, Illinois, Nevada, New York, Utah, and Wyoming although mentioning correlative rights in the declaration of policy, or in some instances defining correlative rights, do not make further reference thereto in connection with any power or duty of the regulatory agency other than in respect to the pooling of interests in a well spacing unit or in connection with pool unitization. They make no mention of correlative rights with respect to the broad conservation powers of the regulatory agencies.

The statutes of Indiana, Kentucky, Maryland, Montana, Ohio, Virginia, and West Virginia have no language of any kind that directly or indirectly refers to the protection of correlative or other private rights of the landowners.

The California statutes mention the subject only in respect to the giving to the owner of a tract of less than an acre the right to participate in the production from a well drilled on an adjacent lease.^{37a/} This is a provision adopted to conform to the decision in the earlier California case cited in footnote 37.

Notwithstanding, or perhaps better stated, because of, the constitutional requirement that correlative rights be protected where and to the extent reasonably possible, it would seem wise for a statute to express in clear terms the duty of the regulatory agency in regard thereto.

3.5.2.13 Economic Considerations Other Than Price Regulation^{38/}

Like in the case of "correlative rights", the purposes of the Interstate Oil Compact Commission and, in fact, the conservation statutes of most of the states, omit any reference to economic considerations or "economic waste" in defining the authority of the regulatory agency. Some mention economic

^{36/} Ohio Oil Co. v. Indiana, 177 US 190 (1901).

^{37/} Bernstein v. Bush, 177 P. 2d 913 (Cal. Sup. 1947).

^{37a/} Sec. 3608, as amended, Public Resources Code.

^{38/} For price regulation see section 3.5.2.14 next following.

considerations only in respect to well spacing, pooling within well spacing units, or pool unitization. Others expressly negative any authority to "prevent economic waste".

Some extremists say that there is and should be no relationship between economics and conservation. They advocate conservation "at any cost" asserting that economics should neither be a motive nor a result. Other extremists say that the whole basis for any conservation program is economic. There are also those critics who charge that the conservation programs adopted by the states are but an economic device to manipulate prices and profits rather than prevent waste in the public interest.

The long history of oil and gas conservation legislation in the United States, its beneficial fruits in terms of prevention of actual physical waste and the greater recovery of oil and gas, and the many and unanimous holdings of the courts sustaining regulations for conservation purposes negative unqualifiedly all such extreme positions.

As pointed out in connection with the discussion of correlative rights, the legislation and regulations to be valid under both the Federal and state constitutions must be "reasonable". To be reasonable, whether stated in the statute or not, economics and economic considerations must be taken into account, as otherwise the whole system would be arbitrary and unreasonable and would amount to the taking of private property without due process of law or the equal protection of the law. There is in law and in fact a necessary relationship, a legitimate relationship, between economics and conservation.

In fact, the only incentive to explore for, produce, conserve, market, transport, refine, distribute, and usefully utilize oil and gas is economic. Ignore and remove that incentive and "physical waste" results. This has been the repeated experience that has sired a great portion of the conservation legislation providing for an orderly, sensible, and economically sound program of development and production of oil and gas. The best means or tool to bring about the greatest recovery of oil and gas, and to prevent its physical waste is the avoidance of economic waste. To require the recovery and conservation of oil and gas at a loss would be unconstitutional. A failure to recover the maximum economically recoverable oil and gas is in itself "economic waste" of a valuable natural resource, as well as physical waste.

On the other hand, all of the court decisions sustaining conservation legislation have consistently refuted the claim that the conservation program of the states is designed primarily for economic and profit motives rather than to prevent waste of a natural resource for the common and the public good. The decisions make it clear that the prevention of waste of the natural resources is the principal objective and that economic considerations, if any, are but a means to that end or are incidental.^{12/}

The statutes of Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Washington, and Wyoming all mention economic considerations in respect to the drilling of unnecessary wells, well spacing, pooling, and unitization.

Arizona defines as waste the production of oil when it is unprofitable to dispose of such production.

The statutes of Kansas and Oklahoma include "economic waste" as a part of the definition of waste, that is prohibited by the statutes.

The statutes of Illinois and Kentucky expressly prohibit limitation of production to prevent or control "economic waste".

The statutes of Maryland, Ohio, Virginia, and West Virginia make no mention of economic waste.

No statute defines economic waste.

^{12/} Danciger Oil & Refining Co. v. Railroad Commission, 49 SW 2d 837 (Tex. Civ. App. 1932).
People v. Associated Oil Co. 249 P 717 (Calif. Sup. 1930).
Champlin Refining Co. v. Corporation Commission, 31 Fed. 2d 823 (WD Okla. 1931), aff'd 286 US 210 (1932).
Julian Oil v. Royalties Co. v. Capshaw, 292 Pac. 841 (Okla. Sup. 1930).

3-20-71 HB 849 - 856

Eric Ekholm. S.A. Gas & Oil Pipeline Impact Committee
Option.

Bill Fackler: Comments Core Div. of Oil & Gas &
Personal

31.05.170 (11) waste

No definition of Economic waste in any state -
pool to pool determination ..

849 - Undesirable to operators - Diminish lease bonus
on any lease. Because this would place the
burden on the lessee to provide for this even
though this may not be used.

Enlarge the lease and clean up operations
afterwards.

State would have to constantly monitor the
well.

Anti-consumption - Early abandoned -
discount of future lease bids -

Howe Taylor: Exxon - Good addition to the statutes
but not really necessary.

Lease bonuses substantially reduced. State would be
getting into risky position - No determination
on how much gas will be produced -
Banking is ^{not} done on a long-term basis
short term only -

State can enter into short-term
agreements but not long term.

perhaps ~~state~~ storing up of the oil is not a bad
idea.

Bring up the bill

Rosice Moor -

C.R.F. KENAI NATIVE ASSOC. KATCHEMAC BAY
Protective Assoc.

Compatible uses with Commercial
fisheries -

Opinion poll bad -

Laurel Fleeg Local Habitat Biologist F. & G.

Highly productive -

60% of Shellfish products in Cook Inlet.

Bluff point high concentration of King crab larvae
center of concentration is also in the middle of the
lease area.

KEN Move N.P. F. ASSOC. ^{Northern} ~~Northern~~ Pacific Fisheries

600,000 - 1,000,000 per year

Shipping lanes trying to be used -

Paul Jones: Lease Sale should Not
have happened.

→ Check on Palmers stand on Leases - Any
protests.

F & G. only given three days to comment
on the proposed lease Sale -

Local + Borough planning commissions were
not notified in writing - No input at
all.

Grazing leases -

Controls Not adequate for the area on the Ferris.
Containment boom 90 miles away - Not adequate
for containment of spill should it happen.

Tourist dollars significant amount. Major uses
should be considered.

Lottie Eddelmen 125 Kenai Penn. Fisherman

P
K.F.C.A. Unanimously Voted Support -

1. Unique because of shell fish. + larva.
7 Million whole sale fisheries. 100 resident owned boats.

Shell oil + N.M.F.S. would be detrimental to fisheries - Report will be reviewed + available w/in 4 wks.

2. Recreational area.

C.I.F.A. of Anchorage - Supports est. of Marine Sanct.

3. U.F.A. Board of directors Supports 11/16/26

Existing 41 year resident

Platforms have not substantially affected C.I. Year round fishery in the area.

Economic Considerations - Re: Boom + Bust

No hearing re: Leases -

Irregularities in Lease sale. Gorsch felt this. Leases could have been reviewed 3 months later.

Phil Daniels U.F.A. Recommends the Committee pass the bill out with a favorable recommendation.

Stan Rice Ph.D. in Physiology.

oil Toxicity damage to existing fisheries -

Gear damage - oil Toxicity.

fuel oil spills Most damaging - Crude oil is not as bad.

Aeromatic Toxicity -

Report ~~released~~ ^{finished} by April 5th. but must be reviewed before being released to the public.

Some Mishaps will occur. Not enough data available to assess how much of a problem it will be.

Bob Palmer - Project Co-ordinator of the Fisheries Council.

Record of Special Fisheries Committee on Kachumac Bay.

Minute concentration seeping out but building up to amounts which create

April 17, 1972 - Press Release -

No Public Hearings - NO work with other Agencies.

Fish + Game Memo.

Oct 23, 1971 Notice of Sale to oil industry.

308 people signed the petition to request hearings.

Day before sale people put on notice the Admin. would be subject to legal actions.

Herbert - Fishermen made NO concrete reference.

Huntington: Credit toward Severance tax - Lease sales, Production Tax
get figures → Figures of Raw. Fish products. 3.5 million ←
12% Tax. in F+G.

→ Separate two bills - Put fisheries Management
any authority now allowed the Dept now has.

→ Boundary changes to exclude STATE ARIK
Language change in bill.

Jiel - Listen to tapes.

development of timber barging -

SB 612 Condemnation of oil leases.

Monte TAYLOR - EXXON

Parts of oil in the WATER -

Oil + Fisheries are compatible in the Gulf.
Industry can operate with fishing industry.

2 industry working together - Always will be problems.

Doug Pope -

35.05.35 leasing.

Comm. of Natural Resources did not know that
the area leased was a critical habitat area for crab.

Must Meet Obligations - Commissioner did not meet
his statutory obligations in leasing the Waters in
question.

Copies of the 3 legal briefs. 612 -

Problems: All the leases were not in Critical Habitat area.

F+G - state cannot grant lease then refuse to allow
drilling.