1975-1976

SENATE RESOURCES COMMITTEE

LIST OF FILES (PAGE 1)

COOK INLET LAND TRADE

COOK INLET LAND EXCHANGE

COOK INLET LAND SWAP

SUBCOMMITTEE ON OIL & TAXING POLICIES

SB 405 / SB 406

COOK

INLET

LAND

TRADE

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

Office of the Attorney General
Pouch K - State Capitol
Juneau 99811

April 9, 1976

The Honorable Fred E. Brown
House of Representatives
Alaska Ninth Legislature
Pouch V
Juneau, Alaska 99811

Re: Hb 626, relating to repurchase of Kachemak Bay leases

Dear Representative Brown:

You have asked for our views on the constitutionality of legislation which would temporarily suspend the rights of the Kachemak Bay oil and gas lessees to drill or otherwise explore or develop their leases. The purpose of the temporary suspension is twofold: (1) to allow the Department of Fish & Game a reasonable period in which to develop plans and regulations to protect the living resources of Kachemak Bay from possible pollution incident to development activities, and (2) give the Commissioner of Natural Resources a reasonable opportunity to negotiate a repurchase of the leases.

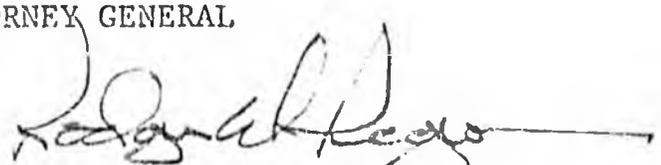
The precise question you have raised was addressed and answered in two recent cases: Union Oil Co. of California v. Morton, 512 F.2d 743 (9th Cir. 1975), and Gulf Oil Corp. v. Morton, 493 F.2d 141 (9th Cir. 1973). In Gulf Oil Corp., the rule was established that a temporary suspension of drilling rights for a reasonable period in which Congress might act to cancel the leases (with compensation) was permissible. In Union Oil Co., the rule was established that an open-ended suspension based on considerations which were not by their nature temporary constituted an unauthorized cancellation.

We are of the view that the temporary inconvenience to the lessees, including a speculative loss of profit, does not impair the legislature's power to impose a fixed, temporary suspension on the lessees' drilling and development rights. The proposed legislation falls within the rule of Gulf Oil Corp., and that rule was expressly reiterated and distinguished in Union Oil Co. Indeed, the situation here is even stronger. In Gulf Oil Corp., the Secretary of the Interior acted on his own iniative, suspending the drilling rights and submitting a cancellation proposal (never acted upon) to Congress. Here, the legislature would be imposing the suspension and fixing the time itself. Under these circumstances, there is simply no room for reasonable dispute as to the legislature's power to act on this subject.

There is no rule better settled than that the legislature may enact any law not prohibited by the state or federal constitutions. The rule from Gulf Oil Corp., is that there is no unconstitutional taking here. The prohibition in the state constitution against local and special legislation simply cannot be applied to a situation of such singularity as the Kachemak Bay leases. Both Gulf Oil Corp. and Union Oil Co. agree that this exercise of police powers does not unconstitutionally deprive the lessees of contract rights. Accordingly, the proposed legislation presents no constitutional problems.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
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Assistant Attorney General

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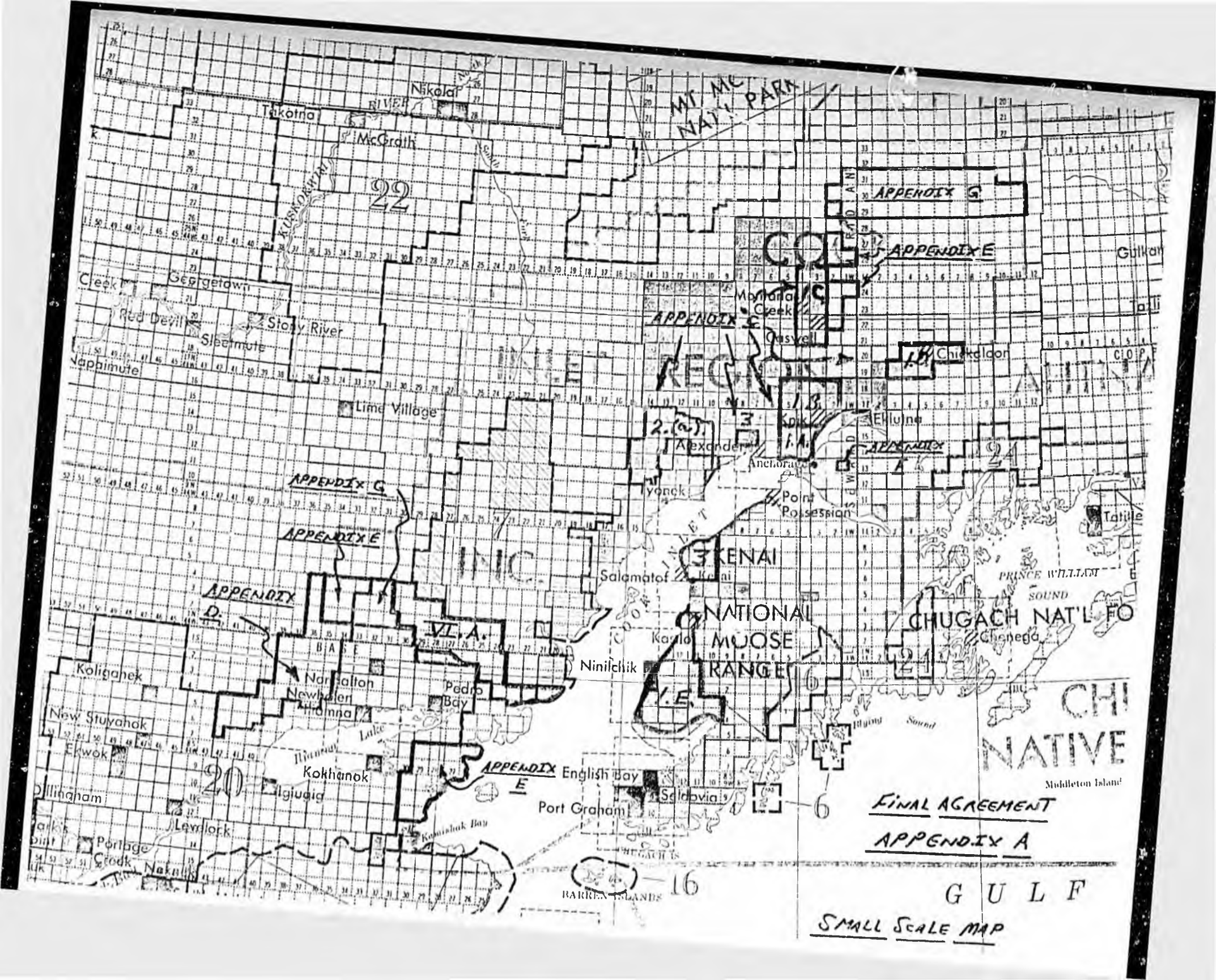
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Gulkana
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Red Devil
Stony River
Sleetmute
Nappaimute
Lime Village
Crooked Creek
Montana Creek
Cassvell
Chickaloon
Ekluna
Alexander
Anchorage
Tyonek
Point Possession
Salamatof
Kenai
Nanwalek
Port Graham
Seldovia
English Bay
Pedro Bay
Newhalen
Nondalton
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Koliganek
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Chenega
Bligh Sound
Middleton Island
BARREN ISLANDS
PRINCE WILLIAM SOUND
KENAI NATIONAL MOOSE RANGE
CHUGACH NAT'L FO
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GULF
FINAL AGREEMENT
APPENDIX A
SMALL SCALE MAP

	Agreement Document (Page) & Section Reference	Map Reference
4. 11 townships on Kamishak Bay (near Mt. Augustine).	(51)	Appendix G
52 TOWNSHIPS TOTAL		
B. The right to select an additional 12.4 townships in the Talkeetna Mountains and Koksetna River areas.	(52)	Appendix G
C. Immediate conveyance of approximately 4,000 acres in the Campbell Tract in the heart of the Anchorage Bowl.	(42)III-B	Appendix F
D. Early conveyance of Point Woronzof, Point Campbell and Goose Lake withdrawals.	(41)I-C-2(e)	--
E. Protection of approximately 12 townships of land previously selected by the State in 1972, but which would be selected by Cook Inlet Region if the proposed land trade is not effected.	--	--

III FEDERAL GOVERNMENT RECEIVES:

A. No lands directly, but will retain title to a number of specific townships within Cook Inlet Region which the Regional Corporation will otherwise select.

B. Several other benefits not directly related to the receipt of land:

(a) Settlement of Cook Inlet Region's entitlement under ANCSA.
(b) Settlement of Cook Inlet Region's suit against the Secretary.
(c) Minimal impact upon lands in the Kenai National Moose Range.
(d) Improoved land ownership pattern in the Lake Clark area.

IV MISCELLANEOUS PROVISIONS:

A. No oil and gas fields will be transferred to native ownership (all revenues currently received by the State will continue).

B. All lands transferred to native corporations will contain ANCSA safeguards (e.g. easements).

C. All state lands conveyed will additionally contain dedicated or platted section line easements and highway or other rights-of-way.

BRIEF SYNOPSIS OF
THE PROPOSED COOK INLET LAND TRADE

The following is a short summary of the major aspects of the proposed Cook Inlet Land Trade. The "agreement document" which forms the basis of the agreement among the three parties is found in the U.S. House of Representatives' Report No. 94-729 dated December 15, 1975. The "agreement document" is found on page 35 of that report and is entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area." To assist parties interested in the specific details of the "agreement document", appropriate page and section references follow each specific point in the summary below. In addition, where appropriate, a map reference refers to the attached map.

	Agreement Document (Page) & Section Reference	Map Reference
I COOK INLET REGION RECEIVES:		
A. FROM FEDERAL GOVERNMENT:		
1. 10,000 acres excised from the Kenai National Moose Range abutting the western end of Lake Tustumena (with the following covenant: no sale for 25 years; if then sold, first right of refusal to the federal government; strict development restrictions along edge of Lake Tustumena).	(35)I-A	--
2. Up to 9.6 townships of sub-surface rights to oil, gas and coal (subject to normal Moose Range surface restrictions; coal may only be removed in a liquid or gaseous state).	(37)I-B (43)IV	--
3. All federal lands in the following:		
(a) T.10S., R.9W., F.M. (near Healy).	(37)I-B-(1)	--
(b) T.20N., R9E., S.M. (Glenn Highway near Matanuska Glacier).	(37)I-B-(1)	--
(c) T.1N., R.21W., S.M. (west side of Cook Inlet - 15 sections - title to metalliferous minerals only; Secretary must approve surface mining plans).	(37)I-B-(2)	
(d) T.1S., R.21W., S.M. (west side of Cook Inlet - 18 sections - ownership in fee; surface use only for mining needs).	(37)I-B-(3)	--

	Agreement Document (Page) & Section Reference	Map Reference
4. Outside Region - 29.66 townships outside Cook Inlet Region (from native deficiency or d(1) lands in the Ahtna, Bristol Bay, Calista, Chugach or Doyon Regions; certain protections for the Federal government, State and regional and village corporations).	(38)1-C-(1)	--
5. Within Region pool (up to 138,000 acres of federal surplus lands; any acres selected come from "out-of-region" selection entitlement; State has certain safeguards to protect public interests).	(38)1-C-(2)	--
B. FROM STATE:		
1. 1.2 townships of scattered tracts (lands in the vicinity of Point McKenzie, Knik, Kashwitna and Chickaloon).	(48)1-AtoD	Appendix C 1A-D
2. 1.8 townships to the certified native villages and groups of Chickaloon, Knik, Alexander Creek, Salamatof, Ninilchik, Montana Creek and Caswell (to trade villages out of Lake Clark).	(50) 3	Appendix C 3
3. 5.0 townships on the Kenai Peninsula.	(49)1-E	Appendix C 1-E
4. 13.5 townships in the Beluga area	(49) 2	Appendix C 2
21.5 TOWNSHIPS TOTAL		
STATE RECEIVES:		
A. The following lands over and above its statehood entitlement:		
1. 26 townships in the Lake Clark area.	(50)	Appendix D
2. 7 townships in the Tutna Lake area.	(51)	Appendix G
3. 8 townships in the Talkeetna Mountains.	(51)	Appendix G

STATE OF ALASKA
JAY S. HAMMOND, Governor
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS, 323 E. 4TH AVENUE, ANCHORAGE 99501

OPENING STATEMENT
Cook Inlet Public Hearing
(October 2-3, 1975)

The transaction which will be described in this briefing and then discussed in public sessions is a unique attempt at governmental/private sector/public interest cooperation to resolve a complex problem of real importance. The problem relates to the right of the Cook Inlet Native Regional Corporation to select Federal lands under the terms of the ANCSA.

Briefly stated, the problem is as follows: The Cook Inlet Region has an entitlement under the ANCSA for land selections, and the Department of Interior has an obligation to withdraw lands for these selections. Unlike other regions, the ability to find adequate land for withdrawal and selection is greatly limited by the high percentage of private ownership and publically classified land in the key Cook Inlet areas. The Department of Interior made withdrawals under these already difficult circumstances which, from the standpoint of the Region were unfair, inequitable and illegal, and which, from the perspective of both the State and the Federal Government, probably created unsatisfactory land ownership patterns in the entire area.

Cook Inlet Region has brought suit challenging the legality of the Interior withdrawals under the Act, and that suit is now on appeal after losing in the District Court. The State is not a party to the suit, although the appeal could have great implications for the State if Cook Inlet Region prevails on one of its requests that land previously selected by the State be redirected to the Regional selections. Thus, there is an element of judicial uncertainty here.

Looking only at the Region and the Department; only two outcomes are possible depending on the outcome of the appeal and subsequent litigation. The first is that Interior will prevail, and Cook Inlet will be forced to select in areas generally agreed to be inappropriate for private ownership and probably inequitable for the Regional Corporation as compared to what other Regions selected under the Act.

The second is that Cook Inlet will prevail, and receive selection rights which, although perhaps more equitable to the Region, would involve selection in areas still inappropriate for private development (Moose Range) or perhaps invalidate State selections, although this is less likely.

Either of these outcomes will have undesirable consequences, and this has been recognized by the State, by the Region, by Interior, by various public interest groups, by Alaska's Congressional Delegation and other members of Congress, and by various other parties in the private sector.

What has emerged from this situation is a widely shared desire to explore the possibility of some compromise which would avoid the inflexible results of an administratively or judicially imposed solution. Such a compromise could not be possible without the participation of the State, for the constricted land ownership patterns in the Cook Inlet Region make total resolution of the problem using only Federal land untenable.

As a result of the widespread understanding of the problem and of the need to explore some resolution in the public interest, the State has engaged in a lengthy and complex series of discussions to seek a common answer. We have been encouraged by our Congressional Delegation, assisted by a variety of informed and expert people, and barraged whenever it has appeared that an improper idea has been considered.

At all times, the State has been aiming at a solution to this problem which can achieve a broad consensus of public acceptance after full public briefing and discussion. This is the purpose of the series of meetings being held this week.

We solicit the public's response, and hope you share our view that this solution makes sense. Public comments will be reviewed by the Division of Lands, the Commissioner of Natural Resources, and the Governor's Office prior to any finalization of a State position.

There are really a limited number of outcomes to this situation. Interior could win the law suit and force its original withdrawals to be the basis of selection. Cook Inlet could win and gain whatever selection rights the Court confers. Congress could act unilaterally to legislate a solution on its own, but does not wish to do so unless necessary, or the agreement we will be discussing today could be certified to Congress as the solution upon which all agree. Our Delegation and others have asked for such an agreement.

By our presentation today, the State is recommending the latter course as the one which best serves the public interest under the circumstances, and presenting to the public the substance of the terms basically agreed upon by negotiators for the three parties.

In summary, what you will be hearing reflects a great deal of work by many people on an extremely complex issue. We hope that you will consider it as a local citizen, a State citizen, and a national citizen, as well as a neighbor of the Cook Inlet Region.

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF NATURAL RESOURCES

IMMEDIATE PRESS RELEASE

DIVISION OF LANDS, 323 E. 4TH AVENUE, ANCHORAGE 99501

BACKGROUND
Cook Inlet Land Trade Proposal

In the discussions with Cook Inlet Region, Inc. and the Department of the Interior the State has attempted to accomplish a number of objectives, including the assurance of a rational land ownership pattern within the Cook Inlet Basin and the ability of the State to control certain lands which it feels necessary to properly protect its future interests. This latter point is predicated upon the State's firm conviction that it can govern more effectively and be more responsive to its citizens' needs than could the federal government.

As it is the role of the State to provide its citizens with a number of public services (i.e. transportation, communications, education, public safety, etc.) it is in the State's interest, both socially and economically, to insure that future development occurs in those areas best suited for such development, i.e. within areas which contain good land forms, ground water, no flowing, etc. and to which governmental services may be brought in an economical manner. This was a prime consideration in determining which lands the State tentatively offered to Cook Inlet Region, Inc.

With respect to lands which the State seeks to gain through this transaction, the emphasis was on those lands in the Cook Inlet and nearby Iliamna Lake areas which the State feels should remain in public ownership and which it wishes to own itself to insure that its objectives in those areas are under its' own control. In particular, two areas were sought. First, the lands presently in federal ownership in the Talkeetna Mountains area, where Cook Inlet Region would select, north and east of the populated Matanuska and Susitna Valleys respectively. In addition to timber, watershed, mineral, and high recreational values, these lands will become increasingly more important to the State as future development and settlement intensifies on the periphery in the Matanuska and Susitna Valleys.

The second area of interest is Iliamna Lake. This watershed produces the worlds largest red salmon fishery and it is upon this fishery which the major portion of our citizens in the Bristol Bay Region are dependent. The area is also the focus of the finest trophy rainbow trouts system in North America. The State has management control of these fisheries and by gaining control of the remaining public lands would be able to more effectively manage these fisheries in the public interest. Also, with approximately 15 percent of the lands in the Bristol Bay area going into native village corporate ownership the State feels it can be much more responsive to both their private needs and those of the public in this area than could be the geographically removed federal government. In addition to the very high fishery values, this area has high wildlife and recreational values as well as some oil and gas potential.

COOK INLET LAND TRADE PROPOSAL

This proposal is fairly complicated as a result of the existing land ownership patterns within the Cook Inlet Basin, the individual interests of the three parties concerned, and the legal constraints of the Alaska Native Claims Settlement Act (ANCSA). Additionally, the parties felt it imperative to deal with several closely associated issues such as ANCSA land selections by certain villages within the Cook Inlet Region. The various aspects of the tentative proposal are outlined below in conjunction with the attached map. The reader must realize that this is a simplified, capsulized summary and that persons wanting more information are requested to contact the Alaska Division of Lands in Anchorage.

TABLE I.

COOK INLET LAND TRADE PROPOSAL

PARTIES	LAND TRADED LOCATION	AMOUNT	MAP NO.*	COMMENTS
State to Cook Inlet Region, Inc.	Kenai Penn.	5 Twps.**	1	These are lands suitable for pvt. ownership and development where settlement has occurred or will occur in the future.
	Beluga Area	12 Twps.	2	
	Scattered Tracts (Matanuska & Susitna Valleys)	1.2 Twps.	3 a-d	
	Total	18.2 Twps.		
State to Villages or Certified Native Groups	Montana Ck.	.5 Twp.	3d	More suitable lands for pvt. ownership and to prevent native selection of key Kashwitna River lands in proposed state park.
	Caswell Ck.	.5 Twp.	3d	
	Salamatof Area	.5 Twp.	4	"Out of court" offer to drop village eligibility suit which threatens loss of a total of 4 twps. from state and Moose Range lands.
	Alexander Ck. Area	.5 Twp.	5	"Out of court" offer to drop eligibility appeal which threatens lands in Lake Clark area and the west side of Cook Inlet that are of interest to the State.

* See Attached Map for area location
** "Twp" = "Township" = 36 Sections = 23,040 acres

COOK INLET LAND TRADE PROPOSAL

PARTIES	LAND TRADED LOCATION	AMOUNT	MAP NO.*	COMMENTS
	Tyonek Area	<.5 Twp.	2	Lands offered to Tyonek to reduce to a minimum Tyonek ownership of land within the Kenai National Moose Range.
	Knik Area	.21 Twps.	3a	More suitable lands near villages in return for public ownership of important lands selected by these villages on Lake Clark.
	Chickaloon Area	.08 Twps.	3c	
	Total	2.8 Twps.		
Cook Inlet, Inc. to State	Talkeetna Mtns. Lake Clark we ? side of Cook Inlet	31 Twps.	6 a-f	State will designate which twps. from a total pool of approximately 180 twps. from which Cook Inlet, Inc. may select.
Villages and Groups to State	Montana Ck.	.5 Twp.	6 a	State receives lands selected by these groups within proposed Talkeetna Mtns. State Park.
	Caswell Ck.	.5 Twp.	6 a	
	Tyonek	<.5 Twp.	7	State receives lands selected by Tyonek on Kenai Penn. within or on edge of National Moose Range.
	Knik	.85 Twp.	6 e	State receives these lands on shores of Lake Clark.
	Chickaloon	.32	6 e	
	Total	2.7 Twps.		
Federal Gov't. to Cook Inlet	Kenai Nat'l. Moose Range	.87 Twps (20,000 ac.)	8	Moose Range boundary to be adjusted to exclude these lands; a 1/4 mi. "no development zone" on edge of Tustamena Lake.
	Kenai Nat'l. Moose Range	.87 Twps (20,000 ac.)	9	Lands to be within Moose Range and subject to restrictions such that any use of the land must be beneficial to the purposes of the Moose Range.

* See Attached Map for area location

** "Twp" = "Township" = 36 Sections = 23,040 acres

COOK INLET LAND TRADE PROPOSAL

PARTIES	LAND TRADED LOCATION	AMOUNT	MAP NO.*	COMMENTS
	West side of Cook Inlet	1 Twp.	6 f	From lands in which Cook Inlet is entitled to select.
	Extra-Regionally	26 Twps.	--	To be selected adjacent to village or region corporation lands in certain other native regions. State is able to direct location of these selections and can block selections of certain twps. the State wishes to keep in public ownership.
	Throughout Region	2 Twps.	--	A maximum of 2 twps. of surplus lands from Federal withdrawals which might be found to be surplus by the Secretary pursuant to ANCSA Section 3(e).
	Throughout Region	1.5 Twps.	--	Other federal lands on Kenai Peninsula or elsewhere (e.g. reverted homesteads).
Federal Gov't. to Villages	Kenai Nat'l. Moose Range	8-12 Sections	-	Federal gov't. may offer to exclude certain of Tyonek selected lands from Moose Range restrictions in return for Tyonek substantially reducing it's selections within Moose Range.
Federal Gov't. to State	Lake Iliamna Area	30 Twps.	10	In return for lands remaining in federal ownership which Cook Inlet would otherwise select absent the State's trade, the State would receive from the Federal gov't. lands which the State could not otherwise select.
	Kenai Nat'l. Moose Range	5-12 Sections	11	Moose Range lands to be added to the State's Captain Cook Recreation Area or otherwise given to the State for state lands used to reduce Tyonek's selections within Moose Range.

* See Attached Map for area location
** "Twp" = "Township" = 36 Sections = 23,040 acres

COOK INLET LAND TRADE PROPOSAL

PARTIES	LAND TRADED LOCATION	AMOUNT	MAP NO.*	COMMENTS
Cook Inlet to Villages	Salamatof	1.5 Twps.	6f	"Out of court" offer to Salamatof to drop village eligibility suit which, if successful, would significantly reduce Cook Inlet's land within National Moose Range.
	Knik Area	.21 Twps.	3 a	More suitable lands near villages to ensure public ownership of important lands selected by these villages on Lake Clark.
	Chickaloon Area	.08 Twps.	3 c	

MISCELLANEOUS

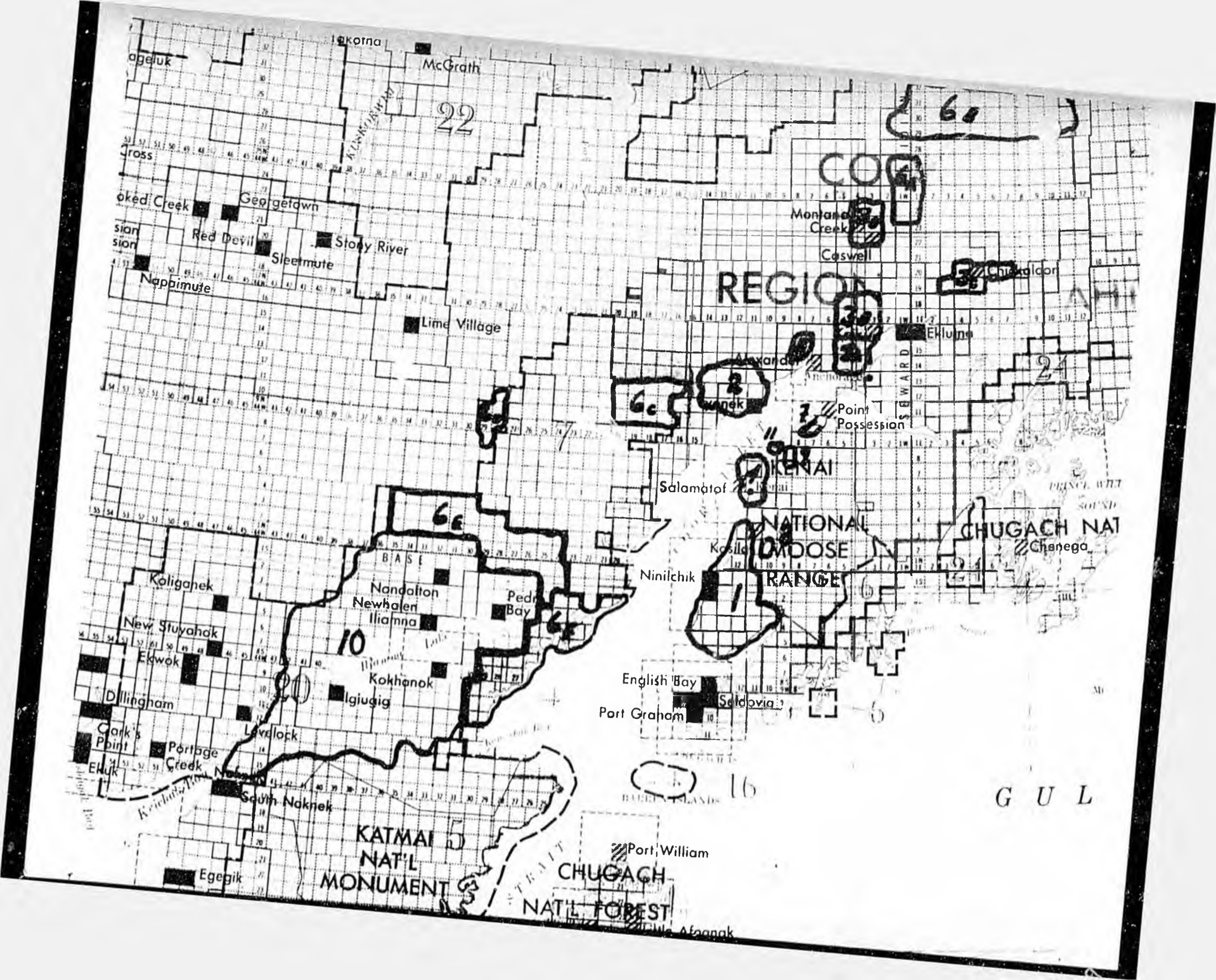
The proposal does not convey to Cook Inlet, Inc.:

1) Subsurface resources in any producing oil and gas fields (e.g. Swanson River).

2) Any of the Swanson River canoe system lands.

3) The Russian River area

4) The present federal lands at Point Woronzoff, Point Campbell or the Campbell Tract.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Sleetmute
Nappimute
Lime Village
Caswell
Montana Creek
Chickaloon
Ekluna
Alexander
Point Possession
KENAI
Salamatof
NATIONAL MOOSE RANGE
CHUGACH NAT
Chenega
Ninilchik
Koliganek
Nondalton
Newhalen
Iliamna
Pedro Bay
New Stuyahok
Ekwok
Kokhanok
Igiugig
Dillingham
Clark's Point
Portage Creek
Levelock
South Naknek
KATMAI NAT'L MONUMENT
Egegik
English Bay
Port Graham
Seldovia
Port William
CHUGACH NAT'L FOREST
Afognak
BASE
SEWARD
PRINCE WILL SOUND
GUL

C2-001B

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS

APPENDIX B

TO: Cook Inlet Land Trade File

DATE : November 6, 1975

FROM: Michael C.T. Smith
Director, Division of Lands

SUBJECT: Public Notice & input

As it was decided very early in the discussion stage that any final decision would not be made until the proposal was made public and the resulting input analyzed, the administration went to significant lengths to insure as public a process as possible before the final decision was made. Below, in approximate chronological order, is summarized that public notice and input process.

In late April and May, preceding the initial House and Senate hearings concerning CIRI's proposed legislation, the State was in contact with a number of individuals and agencies. This included numerous meetings with Tom Meachan, Anchorage Borough Attorney, to insure that the Borough's interests in its recreational and open-space lands were protected. In a similar manner contacts were made with Stan Thompson, Kenai Borough Mayor, and John Spencer, Archorage City Attorney. Regular contact was also maintained with the Joint Federal-State Land Use Planning Commission. Preceding and following the Congressional hearings in May the media was briefed and carried numerous stories concerning the proposal. With relatively minor exceptions, all aspects of the proposal which have received public comment during the past months were published in the media as long ago as last May. Additionally, detailed presentations concerning the proposal were made before both the House and Senate sub-committees addressing CIRI's proposal. These detailed presentations are, of course, part of the official committee hearing records. In mid-June contact was also made with representatives of the Placer Amex Co., owner of several of the coal leases in the Beluga area to determine their feelings concerning the proposal. On June 27th a meeting was held with Mike Spaan, Administrative Assistant to Senator Ted Stevens, and on the following day another meeting was held with Senator Stevens concerning the proposal in Anchorage. Additionally, at approximately the same time and in response to a request by Homer Burrell and a reporter from the Anchorage Daily News, the Cook Inlet Land Trade File was made available for their review and this was again followed by a detailed release of the then current proposals in a new article.

Following more testimony concerning the proposal before Senator Haskel's Interior sub-committee in late September, the State launched a five-week public briefing and input campaign to insure public awareness of the proposal.

The specifics are listed below.

Sept 23rd - Letters to all legislators containing copy of the press release announcing public hearing dates.

" 26th - Public hearing news release distributed to media.

Sept. 27-28 - Public meeting announcements carried by the press and radio in Anchorage

Oct. 1st - Detailed media briefing including radio, TV, daily press and Alaska Scouting Report representative.

- Special briefing of groups which had indicated interest in learning specifics of the proposal at an early date (Bicentennial Park Committee, Mountaineering Club, Issac Walton League, Alaska Conservation Society, Alaska Float Plane Association, etc.).

" 2nd - Special briefing for organized Boroughs affected by proposal (Anchorage, Kenai, and Matanuska-Susitna Boroughs).

- Briefing for Legislators

- Telephone conversation with Placer Amex

- A 2 1/2 hour public briefing and question presentation at Loussac Library in Anchorage (over 70 in attendance).

" 3rd - Meeting with David Pree, Esquire Re: Mental Health Lands

- Meeting with Alaska Miners Association (Bill Wagaman, President, and Chuck Hadley).

- Public hearing at Loussac Library to receive input (three hours with over 75 persons attending).

" 6th - Briefing of Capital Site Selection Committee

" 7th - Public briefing and input presentation held at Alaskaland in Fairbanks following three days of radio and press advertisement of the meeting.

" 10th - Briefing of Bureau of Land Management personnel.

" 12th - Meeting with representatives of Placer Amex

" 22nd - Briefing of Anchorage Chamber of Commerce Special Land Trade Committee

" 24th - Public briefing of Federal-State Land Use Planning Commission

Nov. 4th - Public briefing of Kenai peninsula Borough Assembly

In addition, numerous contacts were had with interested groups and members of the public who contacted the Division of Lands to gain more specific information following exposure to the proposal in the media or at public meetings.

DS-0018

STATE
of ALASKA

MEMORANDUM

TO: Cook Inlet Land Trade File

DATE : December 2, 1975

FROM: Michael C. T. Smith, Director
Division of Lands

SUBJECT: Public Notice and Input
(Addendum to 11/6/75 Memo to File)

The following is an update of an earlier memorandum detailing some of the specifics of the Public Notice and Input process concerned with the Cook Inlet Land Trade Proposal.

October--the October issue of the Division's Publication "Alaska Land Lines" carried a five page outline of the details of the proposal as presented publicly the first week of October.

Nov. 7---the Governor, the Commissioner of Natural Resources and the Director of Lands met for three and one-half hours with a special land trade subcommittee of the Legislative Council. A detailed briefing was given to the subcommittee.

Nov. 17--meeting with representative Ted Smith and Harold Gallette at the Division of Lands.

Nov. 25---meeting with Tom Meacham, Land Trust Lawyer for the Anchorage Municipality.

Nov. 25--luncheon speaker presentation by Director of Lands to the Alaska Society of Civil Engineers.

Alaska State Legislature

Senate

JUNEAU, ALASKA

March 11, 1975

Senator Kay Poland, Chairman
Senate Resources Committee

Re: Senate Bill 175

Attached is a statement of position by the Oil and Gas Industry as it pertains to Land Use Planning and Coastal Zone Management. The statement is part of a background paper on Oil and Gas prepared for the Coastal Zone Workshop, Woods Hole Oceanographic Institution. That background paper with attendant bibilography is now available at the Committee office for review by members.

For your convenience, I have summarized the position paper as follows:

1. State lands should be administered in the best public interest. Critical areas should be designated, but indefinite moratoriums on development or declaration of areas to single use sanctuaries should not be permitted.

2. Multiple compatible uses of land allowing free enterprise and protecting private property rights should be encouraged. This can be done by performance standards that will also protect marine and wildlife resources, recreational facilities, parks and wildlife preserves. Regulatory systems may also be needed, but they should not be preemptive or prohibitive.

3. State policy must dominate, but not to the extent of participating directly in local use planning. Broad goals and the State's needs can be expressed for essential local government cooperation. Compacts with local governments are preferable to solutions mandated by a State authority.

4. The role of State and local governments should be carefully delineated. Local authority should not permit domination by special interests. Industry and citizens' groups should be represented in planning. Authority of any coastal zone management agency should be limited to receiving federal funds, providing for a system of management, and to providing a means for coordination with local governments. Control or cessation of existing

inimical activities should be through the courts or remedial legislation. Changes of standards should be in response to technological and social needs and should be in subject to due process.

5. The economic climate should also be promoted and protected.

6. Coastal zone limits should be clearly delineated in distances, rather than in the abstract terms of ecological protection.

7. Specific needs expressed by the oil and gas industry are:

   A. Access to land and water, surface, and subsurface.

   B. Space for facilities and supply routes.

   C. Right to compete for land use and the opportunity for profit.

   D. Sanctity of contract and fair administration of laws.

As we indicated in our memo of March 5, 1975, a Coastal Zone Management Act must be sufficiently accomodating to diverse interests. The above views were made available to us for study. In turn, we submit them to you, without evaluation, for your ready information in the attempt to produce a Committee Substitute.

Sincerely,

George C. Silides

George C. Silides
Galliett and Silides
Consultants

LAND USE PLANNING AND MANAGEMENT
STATEMENT OF POSITION

In some areas of the nation, society's many and varied demands for the use of finite land resources has resulted in a growing awareness that existing systems of land management are unable to prevent loss in productivity, the misallocation of resources, or provide adequate environmental protection. In such critical areas, states and federal governments have complimentary roles to play and new or revised systems of land use planning and management are needed in order to assure proper resource development and adequate land and water sites for essential activities and to provide a proper balance among economic achievement, environmental conservation, and other emerging social concerns. Such systems must protect private property rights, maintain a climate for competitive free enterprise, encourage compatible multiple uses of land resources, protect the environment and desirable ecosystems, and be sufficiently flexible to adapt to social and technological changes. Although the exact structure of planning and management systems may differ from state to state, there exists a common set of principles by which each may be tested and these are set out below.

New Land Use Systems Applied to Areas of Critical Concern. The imposition of new or revised systems of land use planning and management implies greater or more effective restriction on freedom of choice for the use of land and water sites. Such is not needed in all areas of the nation, but only in certain critical areas where the competition for finite land resources has become or likely will become excessive. Therefore, limited geographically determinable areas of such critical concern should be specifically and formally designated by the state land use system for planning and management purposes. Such an area could be designated one of critical concern pursuant to public notice and hearings. Areas of critical concern should be designated early enough to prevent environmental or economic deterioration, however, indefinite moratoriums on development of such areas pending consideration should not be permitted.

Protect Private Property Rights. The right of private property owners to use their lands in any lawful manner of their choosing is essential to our democracy and the progress of our economy. It should be a goal of land use systems to avoid unduly preempting an owner's choice of land use or overly restricting the choices available to him. Land use systems relying primarily upon preemptive statewide zoning or national or regional land use plans or specification of single-use designations are undesirable in this respect and should be discouraged.

Compatible Use and Performance Standards Encouraged and Dominant Uses Recognized. State land use systems which adhere to the concept that multiple compatible uses of land are desirable should be encouraged. Management systems based on uses meeting prescribed performance standards are to be preferred over permit, zoning or regulatory systems although these latter, too, may be consistent with the goal of encouraging compatible uses, particularly in urban areas. Performance standards for areas of critical concern could be developed by the land use authority pursuant to a study of the area and its use values and pursuant to the usual administrative due process, including public notice and hearings.

In some areas of critical concern, it will be recognized that the area is particularly suited for one or more uses. It is proper for the authority to recognize such dominant uses and prescribe performance standards for other compatible uses so as to protect the dominant use or uses. All uses which meet the performance standards should be allowed.

Free Enterprise Encouraged. While it is a proper role and function of government to assist in the orderly, efficient development and use of lands through the establishment of reasonable and fair performance standards of activities in such areas with due regard for the legitimate needs of all users, it is essential that such assistance be provided in ways consistent with a favorable climate for private investment. The best interests of the nation are served, and the natural resources are most efficiently developed through the operation of a system of competitive enterprise under enlightened regulation. Legislation affecting land use management should state that it is the goal of government to promote and protect such an economic climate.

States Should Dominate. Land use planning and management systems will involve all levels of government and the role of each should be carefully delineated. In our system of government, the states have the basic authority to manage non-federal lands and therefore should have the dominant role in the land use system. The degree of concentration of administrative power at the state level is a matter of state concern and will vary with the type and nature of state government involved. It is a legitimate function of state government to delegate authority to agencies, municipal corporations and other substate bodies as needed for proper and efficient exercise of state responsibility. However, in many instances, local actions are at variance with the broader needs of society and it would be expected, therefore, that proposed land use systems will place much of the land use planning and management authority at the state level.

It is recognized that in exercising the dominant role in land use planning and management, the state authorities must so act as to protect national interests in matters of national concern. The states, however, are not always capable of defining such interests and should conform to federal guidelines in such matters. The federal guidelines should be expressed broadly and should cover only matters of legitimate national concern.

Interstate Cooperation Needed. Recognizing that planning for some areas, such as economically or ecologically interdependent regions, may transcend state boundaries, the formation of compacts or commissions as needed by adjoining states' authorities is preferable to the solution of such interstate matters by federal or federal-state commissions.

Administration of Federal Lands. As administrator of federally owned lands, it is the responsibility of the federal government to provide an efficient management organization and administrative system to utilize the federal lands in the best public interest. It is a proper function of federal and state governments to protect recreational and wildlife resources through the creation of parks, wilderness and wildlife preserves and the like on publicly owned land and/or to acquire land for that purpose. Also, public lands should be made available on an equitable,

competitive basis for proper resource development by private enterprise. The goals of compatible use and environmental protection of the state land use systems should also apply to federal lands. Since by far the most populated and economically productive lands are in private ownership, the federal land administration should conform to and be coordinated with the state land use authorities where federal lands exist in areas of critical concern.

Federal Role in Matters of National Concern Affecting State Lands and Private Properties. In matters of national importance, federal policy must dominate and thereby affect state-local government or private prerogatives. The federal role should not be to participate directly in land use planning and management at state levels as regards matters of national concern, but should be to provide broad guidelines to inform state land use planners of national needs. Through national policy statements, broad goals and national needs can be expressed.

Thus, in some instances, the activities of states acting through the land use agencies may impinge on or be at variance with the needs of the nation as a whole. In such cases, enforceable federal guidelines could be adopted to guide state action.

It is the responsibility of the state planners to implement and execute programs consistent with the federal guidelines on matters of national concern.

Federal Financial Support. To the extent possible, the states should be encouraged to be financially self-supporting in their land use planning and management. However, it will likely be necessary for the federal government to financially support the states' land use activities. It is vitally important that this aspect of federal-state relations in land use management not be used to subordinate the states to the federal will. It is appropriate that the federal government review the states' land use systems to be assured 1) that the federal funds will be spent effectively and 2) that matters of national concern are being adequately considered by the states' authorities. The federal government in qualifying states for financial assistance should not specify any particular form of state land use planning and management system nor should the federal government participate in the states' planning process.

Administration Aspect of Land Use Systems. The needs for resource development, the private property rights, ecological and environmental considerations, the wishes of local populace, national security should all be given fair and even-handed consideration. For this reason, it is important that the state land use authority have a balanced bias and not be established in agencies representing only one point of view. Land use planning and management should represent all views and should be responsive to elected bodies. Performance standards, dominant uses and plans should be subject to periodic review. The land use system should bear evenly on all land users and appeal procedures should be available. The state land use systems should not have the power to abrogate contracts or order cessation of activities undertaken prior to the findings of an area of critical concern. The land use authority should not be empowered to declare unlimited moratoriums pending hearings or planning studies nor should it have power to declare areas of critical concern to be single-use sanctuaries.

COASTAL ZONE MANAGEMENT
STATEMENT OF POSITION

Due to the increasing competition for use of resources of coastal areas and a growing awareness that increasing care of the coastal environment is needed, it is likely that new systems providing for coastal planning and management will be established. It is believed that such systems must maintain a climate for competitive free enterprise, encourage compatible uses of coastal areas, and be sufficiently flexible to adapt to social and technological change. At the same time, it is recognized that private enterprise has a responsibility to help maintain an acceptable natural environment, and that there must be a proper balance between the economic development of the coastal zone and environmental conservation.

Needs of Oil Industry

When considering proposed coastal zones management systems at either state or federal levels, there are certain essential conditions necessary for the oil industry to operate which should be protected:

1. Access to land and water spaces, including their surface and subsurface as well as the land beneath water bodies.

2. Space for facilities and supply routes on and beneath the surface of land and water as well as on the land beneath water bodies.

3. Right to compete for mineral rights and leases.

4. Sanctity of contract with government and private parties.

5. Reasonable, consistent and fair administration of laws.

6. Competitive environment.

7. Profit opportunities.

Position on Aspects of Coastal Zone Management

States should dominate. Proposed coastal management systems may involve both the federal and state governments. The role of each should be carefully delineated. Since coastal zone management matters are largely matters of local concern, and since the states have the power and capacity to manage local affairs, the state governments should be the focus of coastal zone management. Therefore, as between federal and state governments, coastal zone management should be a function of the respective coastal states with the federal role limited to financial assistance to state programs, coordination of federal agency activity and protection of national interests. It is a legitimate function of the states to delegate authority to agencies, municipal corporations and other sub-state bodies as needed for proper and efficient exercise of state responsibility. However, delegation of state authority should not be extended to the point where coastal zone management would be dominated by special interests in coastal areas.

Multi-state matters. Recognizing that coastal zone considerations may transcend state boundaries, the formation of compacts and commissions between adjoining states as needed to plan and administer for their mutual benefit activities in commonly occurring coastal areas such as harbors, bays, estuaries, rivers, etc., is believed preferable to the administration of multi-state coastal matters by federal commissions.

The federal role. The federal government role should be limited to 1) providing financial assistance to the states 2) coordinating traditional activities and user services of existing federal agencies with the state coastal zone authorities and 3) protecting national interests through the establishment of broad, national goals. Such goals should recognize, for example, that the coastlines of the United States are national assets as well as coastal state territory and that the interests of all the citizens should be considered in the coastal zone plan. However, the foregoing does not require that the federal government be placed in an active role in planning for or managing a state's coastal zone authority. Federal involvement in state coastal zone management should be limited to assuring compliance with broad, national goals. Additionally, since the state governments should specify their own most efficient organizations, the federal government should not require, as a precondition for financial assistance, a specified or mandatory form of state coastal zone management authority.

Coastal zone management authority. The degree of concentration of administrative power in a coastal zone authority is a matter of state concern and will vary with the type and nature of state government involved. If coastal zone management authorities or other government structures at the state level are established, they should serve to eliminate unnecessary conflicts, improve the efficiency of government operation, maintain an investment climate conducive to competitive free enterprise, encourage multiple use and protect the bio-physical environment. The judgment as to whether these criteria can best be met by an existing government agency, a commission on which existing agencies are represented, an advisory board, a new agency, or some other administrative arrangement should be made within each state or compact of states. The functions of such a coastal zone management body should be limited to receiving federal funds, to providing for the development of a system for coastal zone planning and management, and to providing for coordination of federal and state government activities.

Coastal zone management system. Proposed coastal zone management systems should favor multiple use and encourage competitive enterprise. Management systems based on meeting prescribed performance standards are to be preferred over permit, zoning or regulatory systems although these latter, too, may be consistent with the goals of achieving multiple use and competitive enterprise. Performance standards could be developed by the coastal zone authority pursuant to a study of the area and its use values and pursuant to the usual administrative due process, including public notice and hearings. Performance standards could apply to the commercial use of private property. The non-commercial use of private property is not addressed in this statement.

The goal of such a system should be to encourage multiple use of coastal resources. Any legitimate activity which can meet the performance standards should be allowed. It is a proper function of federal and state governments to protect recreational and/or wildlife resources through the creation of parks and wildlife preserves on publicly owned land and/or to acquire land for that purpose. However, coastal zone management

systems which would be preemptive or prohibitive and tend to freeze coastal areas to present or any specific future use should be opposed. The coastal zone management system should be dynamic in concept, and structured to be responsive to both the evolving needs of society and technological change.

Maintain competitive enterprise environment. While it is a proper role and function of government to assist in the orderly, efficient development and use of coastal areas through the establishment of reasonable and fair performance standards of activities in such areas with due regard for the legitimate needs of all users, it is essential that such assistance be provided in ways consistent with a favorable climate for private investment. A prime need is for government to coordinate its technical assistance and administrative activities so as to increase efficiency of government, prevent undesirable duplication or lack of authority, and to inform the public of the arms of government responsible for various governmental functions. The best interests of the nation are served, and the natural resources are most efficiently developed through the operation of a system of competitive enterprise under enlightened regulation. Legislation affecting coastal zones management should state that it is goal of government to promote and protect such an economic climate.

Geographical limits. Delimitation of coastal zones to definite, determinable geographical areas are to be favored. Thus, inland distances of fixed miles from known baselines or references to known political subdivisions are to be preferred over boundaries defined by less determinable measures such as ecological effects or tidal distances. In addition, the geographic limits of the coastal zone should not extend further inland than is necessary to accomplish the stated purpose of proposed coastal zone management legislation. In order to avoid multiple jurisdictions, the seaward limit of the coastal zone should extend to the limit of state jurisdiction. Each state should be authorized to define the landward extent of its coastal zone for itself.

Non-government advisory groups. The coastal zone authority should provide a means for securing the advice and assistance of citizens advisory groups representing industry and other coastal resource users in the planning and implementation processes.

Limitations of authority. The function of a coastal zone authority should be to provide for a system for coastal zone planning and management. The coastal zone authority should not have the power to abrogate contracts or to order the cessation of activities undertaken prior to the establishment of the authority. Control or cessation of existing activities inimical to the public interest should be accomplished through the operation of existing law enforced by duly constituted agencies or through remedial legislation. Decisions of the coastal zone authority should be subject to appellate review.

Provisions for review of performance standards. Methods should be provided for updating or changing performance standards in response to changing technological and social needs. Procedures for modifying performance standards should be subject to the usual administrative due process including public notice and the opportunity for all affected parties to be heard.

Alaska State Legislature

Senate

JUNEAU, ALASKA

March 5, 1975

Senator Kay Poland, Chairman
Senate Resources Committee

Attached are the Preliminary Comments of our analysis of SB 175, Coastal Zone Management Act.

These comments attempt to show the Resources Committee what the present language of the Bill actually does. Paragraphs 1 - 5 consist of a general statement and paragraphs 6 - 27 deal with specific sections. We recognize that our analysis may be in variance with what the authors of the Bill believe it to say or intend for it to do.

In the attached comments we tried to refrain from judging the Bill as written. However, it is apparent that we find the language restrictive.

We share the universal view that a Coastal Zone Management Plan is an essential and necessary product of the Ninth Legislature, and did so recommend to you in our February 11, 1975, report on the OCS proceedings. However, we do not believe that SB 175, as presently written, sufficiently accomodates the principle of environmental protection and the realities of economic development. As review of the Bill progresses, we shall give the Committee such assistance as it may request in the preparation of a Committee Substitute.

Sincerely,

George C. Silides

George C. Silides
Galliett and Silides
Consultants

PRELIMINARY COMMENTS
SB 175
COASTAL ZONE MANAGEMENT

1. For those communities which will be included within the Coastal Zone, their power to plan, zone, and issue or deny construction permits has been effectively removed. Senate Bill 175 limits those powers to the point of usurpation, by placing these powers in the hands of the Coastal Zone Management Council. No governmental entity is exempted regardless of the status or viability of its governing body.

2. The power of the Commission is double edged. While it can deny a community the right to issue a construction permit for non-conformance with Coastal Zone Plan criteria, it can also force a community to allow an installation it may not wish, if the Commission decides that such an installation would be of regional (and presumably State) benefit. All of Alaska is affected by these decisions.

3. All State agencies are subservient to the Commission in their actions whether these actions are within municipal boundaries or wholly on State lands. For example, no boat harbor, road, or airport may be built within the coastal zone unless approved by the Commission. This is not withstanding the lengthy and detailed review such projects already receive, especially if Federal or State funds are involved. The question of duplicated effort and jurisdiction arises.

4. The Act embraces all State lands under its control. (Sec. 40.27.410) In view of the lack of a State Land Use Plan, this could be viewed as a positive and beneficial step--depending on the final criteria of the Act.

5. The Legislature may wish to consider limiting the jurisdiction of the Commission to State Lands only. The State can always move through the Courts against a municipality in order to protect the physical, social, esthetic, or economic health of its people. As has been evidenced, groups and individuals frequently ask the courts to enjoin specific projects.

6. Addressing the particulars of SB 175, there are indications that while the Act addresses a definite need, a tendency to subvert all philosophies in favor of one also appears present.

In 46.27.010(5) and (6) clearly state the need and purpose of the Coastal Zone Act. Consideration should be given eliminating (1), (2), (3), and (4) as excess verbiage. In any event, highly conjectural adjectives such as "delicately", "permanent", "paramount", and "uniquely", can be suspected of grinding a special ax and will hinder passage.

Consideration should be given to defining the word "natural", under Section 940 of the Bill.

7. Sec. 020 and 290 - That Act provides for a Council which draws up a Plan, and for a Commission which enforces it. Section 20 creates a Council, the majority of which is composed of cabinet members who would normally be the Governor's Planning Council. We note, however, that the one member directly from the Office of the Governor, and who is proposed as Chairman, is not subject to the confirmation process.

8. Section 030 - Three public members are proposed. The Legislature should consider public members other than from the Land Use Planning Commission as directed in Section 30(c), so that greater public input and scrutiny can be provided.

9. Section 050 - Consideration should be given to changing the Quorum to <u>two public members and any other four,</u> instead of the language provided.

10. Section 100 - The Plan or portions of the Plan, should be submitted to the Legislature for adoption by resolution, rather than simple adoption by the Council.

11. Section 110- the purposes of the Act appear well taken except for (4) which deals with population density. Is the right of the people to move and settle to be limited or infringed?

12. Section 130 - the concept of hearings throughout the State recognizes the economic interdependence of all areas of the State, and the need and opportunity for public input is well stated. The word "adoption" should be changed to "submission" if the principle of legislative review and concurrence is to be upheld.

13. Section 140 and 150 - This language does not apply if the jurisdiction of the Commission is restricted to State owned lands. Otherwise the basis appears sound.

14. Section 170 - (1) and (2) are good clear statements. In discussing (3), (4), and (5), the following questions appear in need of clarification:

A. Is the Council assuming functions and policy decisions already specifically designated to other agencies? (Section 950 subverts other agency functions.)

B. Are the elements listed simply as a guideline as to the matters of concern to the Council? In that case, the elements listed are insufficient in scope and line 18, page 7, should read "....which includes <u>at least</u> the following elements, since we note that there are no specific elements relating to refineries, petrochemical plants, timber harvesting, products

manufacturing, fish and shellfish processing, or gas liquifaction, just to name a few.

(6) seems to gut the powers of the Commission being estalished by this Act.

(7) That a "precise" ranking could, or should, be attempted by a quasi-judicial agency such as this Council is extremely doubtful. Furthermore, this sub-paragraph superimposes the value of judgement of the Council over every other State agency or local government. (See item 1 of this analysis.)

Consideration should be given to eliminating 170 (3) - (7).

15. Section 230(b) - What is "substantial"? Should fishermen, loggers, etc., be excluded?

16. Section 290 (B)(4) - The powers of the Commission to conduct investigations appear overly broad.

17. Section 320 - Usurpation of all private and local government options.

18. Section 330 - No person or company can be expected to invest capital or begin construction under a Commission exemption

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15. Section 230(b) - What is "substantial"? Should fishermen, loggers, etc., be excluded?

16. Section 290 (B)(4) - The powers of the Commission to conduct investigations appear overly broad.

17. Section 320 - Usurpation of all private and local government options.

18. Section 330 - No person or company can be expected to invest capital or begin construction under a Commission exemption

that may be nullified upon adoption of the Coastal Zone Plan. It should be noted again that the Council has until 1978. By then all lead time for plant construction depending on oil or gas feedstocks will have been dissipated, leaving no option but to send our royalties outside.

19. Section 340 - (1), (2), and (3) contain words and clauses of debatable degree which usually result in poor legislation.

(4) - with the elimination of the word "otherwise", this sub-paragraph clearly serves the purpose of Section 340.

20. Section 350 - Of themselves, the procedures outlined are good. The question still remains one of jurisdiction.

21. Section 360(a) - This section, together with 320 usurps all State agency and local government planning, zoning, and development policy functions.

(b) - The figure of $10,000 is totally unrealistic to installations worth hundreds of millions of dollars. The criteria are just as unrealistic, and are without regard to safety of life or property.

22. Section 380 - Appropriate only to the extent that the jurisdiction of the Council and the Commission embraces local governments in the final act.

23. Section 390 and 400 - These are the sections which can require a municipality to issue a building permit against its will if the proposed development is deemed by the Commission as being beneficial to the region and, presumably, the State. Regardless of how one might debate the merits or shortcomings of these sections which, together with 320, constitute the essence of the Act, it appears that they violate either or both spirit and the letter of the constitutional rights granted to local governments under their charters.

24. Section 410 - The language of this section effectively bans all development on State lands by requiring "all" of the criteria to be present. See line 11, page 17. An industrial plant, for example, though it might furnish economic or cultural development to the people of a city, a region, or a the state, is not allowable unless it is "essential to the maintenance of a necessary flow of revenue to the State". We interpret this to mean the State treasury from which all blessings are to flow. As a reasonable solution to this restriction it is suggested that:

1) Delete "all of" on line 11, page 17

2) Change (1) to read: "the proposed sale or lease contributes to a flow of revenue to the State.

It should be noted that (2) and (3) of this section are already the functions of other agencies.

25. Section 920 - No one, including the Commission being proposed under this Act, should be granted interlocutory relief without a proper showing of cause. Especially since in this case the word "relief" is synonymous with injunction.

26. Section 940 (1) - This could mean the entire State, since any stream flowing to the ocean will impact coastal ecology. Also, the word "shorelands" should be defined.

Hiding behind the word "significant" does not help. Consideration should be given to some limit.

(4) through (8) is ururpation of policy and function by definition in case you missed it before.

27. Section 950 - This section makes all State agencies subservient. However, since the Council is composed mainly of Commissioners,

the argument that such a coordinating agency has some merit, especially with regard to State lands, should not be overlooked amongst the criticism.

28. The effective date is of more consequence and sensitivity to this Act than to most. Consideration should be given to having separate effective dates for portions of the Act. For example, Articles 1, 2, 3, and Section 940 of Article 6 could have an immediate effective date, while the remainder would go into effect upon adoption of the Plan by the Legislature.

02-001B

STATE
of ALASKA
DEPARTMENT OF NATURAL RESOURCES

MEMORANDUM

TO: Guy R. Martin
Commissioner

DATE : December 6, 1975

FROM: Michael C. T. Smith, Director
Division of Lands

SUBJECT: Proposed Cook Inlet Land Trade

PROPOSED COOK INLET LAND TRADE

Brief History

Because of existing federal withdrawals, state land selections and non-Native settlement patterns within Cook Inlet Region, Cook Inlet Region, Inc., unlike the other regional corporations created under ANCSA, has not been able to select lands which it considered of like and similar character under the formulae established by the Act. For approximately three years following enactment of ANCSA, Cook Inlet Region, Inc. ("CIRI") carried on a long series of discussions with the Secretary of the Interior in an attempt to insure its ability to select lands considered of like and similar character. While the Secretary made a number of withdrawal adjustments, he was not able to satisfy the Region and CIRI went to court seeking redress. Discussions continued between the two parties while litigation ensued and in approximately September of 1974, Interior solicitor Kent Frizzel made an offer to Cook Inlet which specified certain lands which the Secretary would convey to Cook Inlet in settlement of the suit. The "Frizzel offer" proposed, in part, to convey to CIRI ten surface and 15 subsurface townships within the Kenai National Moose Range, including the Swanson River oil field, as well as additional federal lands in the then Greater Anchorage Area Borough. These latter lands included certain parcels which had been eyed by the Greater Anchorage Area Borough for public open space and recreation purposes, more specifically Point Woronzof, Point Campbell, and at least a sizeable portion of the Campbell Airstrip tract. The State did not participate in these discussions and thus was not aware of all contents of the

"Frizzel offer" and the tremendous impact that it would have had upon State interests, particularly financially. CIRI declined the initial offer although it apparently later changed its mind. However, the offer had been withdrawn by that time.

The U.S. District Court ruled in favor of the Secretary in February of 1975, by which point CIRI had gone to Congress to gain support for its problem. Congressional support for some form of amelioration of Cook Inlet's troubles was found with Senator Jackson and Congressman Meedis. These Members of Congress, both Chairmen and both strongest and most effective advocates for Natives and Indians in their respective House, have each publically pledged to see that Congress protects Cook Inlet Region's ANCSA rights. This guarantee must be taken very seriously. Proposals were introduced which were essentially identical to the "Frizzel offer" and hearings were scheduled on these bills for May. At the same time, CIRI had indicated that they were going to appeal the District Court decision in the 9th Circuit. At this time, the Alaska Delegation and others in Congress suggested to the State that it explore the possibility of entering the discussions between CIRI and the Secretary to see if some mutually agreeable solution to Cook Inlet's land selection problem could be agreed upon which involved State land. This was suggested for the reason that inadequate Federal land was available in the Region, and this was at the heart of the problem.

The State was thus faced with the following factors:

1. Some seven months previous an offer, largely unacceptable to the State, had been offered by the Secretary without significant notice to the State. Such an out-of-court or pre-legislative action offer might be again proposed by the Secretary without

State participation. This is a risk of not taking any State action.

2. Although CIRI had lost in District Court, its appeal to the 9th Circuit included a request that the court nullify the September 1972 agreement between the Secretary and the State of Alaska which gave Alaska selection rights to lands south and southwest of Mount McKinley National Park which CIRI claimed it should have been entitled to select. Should the court find in favor of Cook Inlet, the Secretary would be directed to make available to CIRI for its selection a more acceptable array of lands. The Secretary might then have to reject the State's approximately 484,000 acre selection in this area in favor of making these lands available to CIRI for selection. Additionally, if this should happen and the Secretary can respond to a reversal by the Ninth Circuit by seeking to recover from the State the 484,000 acres sought by CIRI, he might also be forced to recover, on behalf of other Regions, conservation groups and other parties aggrieved by the September 1972 settlement, the other of the remaining forty-three and one-half million acres covered by the September 1972 State-Federal settlement. Although the State would oppose any such legal result it remains a distinct possibility to this day. It is a risk of taking no action.

3. Assurances had been given by members of Congress (Congressman Meeds and Senator Jackson) that Cook Inlet would receive favorable legislation if their problem could not be settled by other means. The bills before the Congress at that time were essentially identical to the largely unacceptable "Frizzel offer." A similar bill is before Congress today as an alternative to the proposal below, and is a risk of taking no

State action.

4. The Congressional Delegation had asked that the State take a more active role in discussions to seek an equitable solution to the problem.

5. By entering the discussions, the State could seek to effect other land trades within the region which would guarantee certain favorable land ownership patterns as well as bring under state control specified areas which the State wished to select itself, but would be unable to select if a CIRI settlement were finalized without State participation.

On the basis of the above the State began discussions with CIRI and the Department of Interior in approximately April of 1975. The discussions continued, becoming particularly intense preceding the Congressional hearings in the middle of May. Because of the complicated nature of the discussions, and with additional time available following the May hearings, the discussions progressed throughout the summer and early autumn. At each hearing, the State responded to Congressional requests, and testified regarding progress on a negotiated settlement. Each time, the State and the other parties were requested and encouraged to continue the discussions, and were advised of Congressional time restraints. Following Congressional hearings in the latter part of September, the land trade proposal was almost complete and the State publicly presented the proposal on October 2, concomitantly holding numerous briefings of smaller, more specialized groups interested in the trade (borough governments, conservation groups, Chamber of Commerce, Legislators, etc.). A thorough press briefing was also held. Following public input, additional discussions were held with Cook Inlet Region and the Department of Interior to reflect public sentiment of the

proposal. Details of the public input and subsequent changes in the proposal based upon that input are documented in greater detail below.

Implications

If the State endorses the proposal and it is passed by Congress and implemented, the benefits outlined later will accrue to the State and other parties involved. If the State does not support the proposal, or if the proposal is not implemented for other reasons, a significant number of possible permutations exist with respect to the final outcome of Cook Inlet's selection problem. The four most likely are listed here, but others which would have profound effects are possible.

1. Cook Inlet loses its suit--The CIRI appeal is now in the 9th Circuit. Should the suit ultimately be lost, and no other remedy found, the Region would select according to the withdrawals presently in existence which precipitated the litigation. Selections would be in conflict with over 20 townships the State had previously selected and between 10 to 20 townships that the State would now like to select (including Kamishak Bay which is the prime lower west side harbor site in Cook Inlet). The pattern of Cook Inlet Region selections would be dispersed and would create difficult management patterns throughout the Region. Substantial land would be selected which is deemed more appropriate for public ownership and use (such as the harbor site and lands in the Lake Clark area).

   It should be pointed out that this result is somewhat unlikely, even if the suit is lost, because its loss would very likely precipatate unilateral Congressional action for the reason that these selections are generally regarded as inequitable to the Region.

2. CIRI wins its suit--ramifications of this alternative would depend largely upon the court's directives. Cook Inlet would undoubtedly receive lands of more like and similar character which would be more physically suitable for settlement and development, but such lands are likely to conflict with land uses thought more appropriate by the State. Swanson River revenues might also be included. Sizeable portions of the Kenai National Moose Range, which is also a State wildlife refuge, might be selectable by the Region. The State could lose selections totaling approximately 600,000 acres in the Upper Susitna Valley near Chalatna Lake if the court concurred with one of CIRI's requests for redress (further details are indicated on the attached maps). Much more importantly, the entire Alaska v. Morton out-of-court settlement of September 1, 1972 will be threatened in that the remaining forty-three and one-half million acres of state selected lands pursuant to that agreement would be in jeopardy from other Native regions or other groups who might like to see substantial portions of that state acreage in other ownership.

3. Congressional action--having made commitments to help Cook Inlet, and having waited a considerable amount of time for discussions among the three parties to prove fruitful, Congress might well legislate an alternative amendment over any objections made by the State or others. It is hard to be specific about the form such an amendment might take, however, there is good reason to believe that some alternate form of the "Frizzel offer" might emerge. As discussed earlier, this proposal has extremely unfavorable consequences for the State.

4. Administrative settlement--although the least likely of the four, some administrative settlement between Cook Inlet and the Secretary might be arrived at which would not be in the interests of the state. Past experience indicates that any settlement proposed by Interior must be, because of land availability in the Region, either unacceptable to the Region or if acceptable, then probably extremely unfavorable for the State.

Additionally, certain advantages which the State has been able to gain through the discussions would not accrue. Specifically, the ability of the State to guarantee its selection and ownership of lands in the Talkeetna Mountains, Kamishak Bay and, more importantly, lands in the Bristol Bay areas. If Cook Inlet is forced to select lands in the Lake Clark area, the State's bargaining chip of guaranteeing that those lands remain in public ownership would be lost, and our leverage to bargain decisively for state selection rights within the Lake Iliamna-Bristol Bay proposed National Resource Refuge would be lost. One of the most compelling advantages of this proposal is the leverage which ownership of lands in the Bristol Bay area may give the State in what may be the most important single post-ANCSA federal political decision in the State's history: The 17(d)(2) question.

Basic Objectives Of Proposal

Each of the three parties had its own objectives in the discussions and would emerge with certain specific benefits.

State--The objectives of the State were basically two.

1. State land ownership--by trading 21.4 townships the State would gain selection rights and control substantially larger areas of the Talkeetna Mountains, Chakachamna Lake, Kamishak Bay, and the Lake Iliamna

and Bristol Bay areas. In these cases the State has operated from the standpoint that the State is much more capable, because of governmental infrastructure and location, to more effectively meet the needs of its people by owning these lands than can the federal government which lacks the "local" governmental structure needed to respond effectively to Alaska's needs. The juxtaposition of the Talkeetna Mountains to the rapidly expanding population in southcentral Alaska will become even more critical upon the possible establishment of a new capital city, very possibly immediately adjacent to Talkeetna Mountain lands which CIRI presently plans to select. In the Lake Iliamna and Bristol Bay National Resource Range proposal approximately 15 percent of the lands will be under the control of private Native corporations. The State can more effectively administer to the requirements of its citizens in those areas if it owns the other lands within that region. Additionally, the tremendous dependence upon the salmon fishery resources of that region, and the current responsibility of the State to manage those resources, argue cogently that the State should also control the uplands in that area.

2. Land ownership pattern--as it is the State which must provide those services and governmental functions based upon the land ownership pattern which emerges from Cook Inlet's ultimate selections, it is very much in the State's interest to assure a favorable selection pattern. Under the proposal, ownership patterns would:

A. provide CIRI with lands physically well suited to settlement and development.

B. guarantee that such developable lands would be located in close proximity to existing government services and, therefore, significantly reduce future expense in providing communication, education, transportation, and public safety services to these areas.

C. hasten the development of these suitable lands in a much shorter time frame than could be expected for the remote lands which CIRI would otherwise be forced to select.

D. a sophisticated but critical point is the fact that certain State selection rights, such as the 11(a)(1) (ANCSA) issue, will have to be resolved very shortly. The State believes it can select in these areas, and if it prevails, such 11(a)(1) selections, in combination with the selections under this proposal, would result in a highly desirable State resource ownership patter, particularly in the Iliamna area.

It might well be emphasized that, although the State believes that its own ownership in this area is critical, an equally high value must be placed on simple consolidation of ownership under as few owner-managers as possible (regardless of <u>who</u> is the owner). This is so far the reason that it is a "mix" of ownership and management patterns that creates the greatest difficulties over the

long view for a large resource area.

CIRI--The basic objectives of CIRI are to obtain lands of more like and similar character to those historically occupied by their ancestors within the Cook Inlet Basin. The proposal would largely accomplish this, although the Region will have reduced its entitlement significantly in obtaining these more suitable lands and would be taking over 50 percent of its entitlement outside the Region. The benefits to the 6,000+ members of Cook Inlet Region, Inc. would be increased, and as members of the Southcentral Alaska community these benefits would have substantial favorable economic and social impacts upon the State. Most important, the Region would finally have accomplished certainty in its selections, which is extremely important for the stability of the Corporation.

Federal Government--The objectives of the Federal Government were to settle the responsibilities of the Secretary with respect to the requirements of ANCSA and to accomplish this in a manner which would have minimal impacts upon other values for which the Secretary is charged with protection. More specifically, the proposal would permit a more acceptable incursion into the Kenai National Moose Range, thus protecting fish, wildlife and their habitat as well as the substantial recreational values of the Refuge. The proposal would also leave certain key areas in the Lake Clark area under Federal control and management. This makes sense in terms of other Federal ownership in the area. Most important, it would settle with finality one of the most difficult and complex legal and resource issues under ANCSA, one which has

required substantial governmental resources.

Negotiation Process

The first approach to the State requesting State participation in land trade discussions occurred in mid-February when Andy Johnson, President of CIRI, met with the Director at the Division of Lands. Following the loss of its District Court suit, and the resultant hardening of the Department of Interior's bargaining position, Cook Inlet then took the legislative solution route and only occasional discussions among and between the three parties occurred during the remainder of February, March, and early April. However, as it became obvious that a legislative solution not in the State's interest was a real probability, and following a request for State participation during Congressional hearings, a decision was made to pursue discussions concerning the proposed trade. At this time, the Commissioner and Governor were briefed, guidelines and general policies and objectives were set, and authorization was procured.

Somewhat regular meetings began in approximately mid-April and intensified considerably toward the latter part of April and the first week of May. By this time considerable public interest had been generated by media reports of the proposed amendment and the Anchorage Area Borough, in addition to the State, was working with representatives of CIRI on a very regular basis. Discussions on the part of the State were led by the Director of Lands. Staff assistance was requested when necessary and various staff attended certain of the meetings. Other divisions within the Department of Natural Resources, particularly the Divisions of Oil and Gas and Parks were consulted to a significant extent and other departments were asked to input when it was felt certain terms in the discussions affected their areas of interest. The Division of Aviation and the Department of Fish and Game were particularly involved. The ongoing progress of the discussions was regularly transmitted to the Commissioner of Natural Resources.

By the end of the first week in May substantial progress had been made and it appeared that CIRI would be willing to withdraw its proposed amendment on the basis of the tentatively proposed agreement. However, it was explicitly stated to the Region and Interior Department that final State concurrence could not be had until a public review and comment process had been effected. CIRI understood this and agreed to request that Congress not act immediately on their proposed amendment, but rather allow enough additional time for the proposed land trade to be agreed to by all parties. On May 7 a briefing was conducted by the Director of Lands for the Commissioner, the Governor, and the several appropriate department heads in Juneau. On the basis of that presentation and ensuing discussions, the decision was made for the State to also request that Congress refrain from acting on Cook Inlet's proposed amendment immediately and to allow additional time within which the parties could move to a final agreement following public input in Alaska.

On May 16 the Commissioner and the Director presented such testimony to the appropriate House and Senate Interior Subcommittees respectively. Prior to this testimony the three members of the Alaska Congressional Delegation and appropriate staff were briefed in considerable detail concerning the tentative proposal as it then existed.

Shortly following the Congressional testimony, the Cook Inlet Region, Inc. Board of Directors, for internal reasons not fully understood, voted to reject the then existing proposal and this led to an approximately three week period during which little discussion occurred between the State and CIRI. The lack of agreement was based primarily upon the Region's insistence that it ultimately obtain full surface entitlement under ANCSA, even if outside the Region. The State felt that full entitlement in addition to the lands which the State had proposed to trade to CIRI

was unacceptable. The latter part of June, following some Region concession on the full entitlement issue, discussions began again and continued intermittantly throughout July, August, and September as Congressional deadlines for action continued to recede. The extra time available was invaluable in allowing the State to more closely scrutinize various aspects of the proposal and to work with the Interior Department to insure the State could agree with the concessions which Interior was proposing. During this period additional meetings with the Congressional Delegation, other division and departmental staff and representatives from CIRI occurred. Documentation of these meetings is contained in greater detail in the file.

On September 24 additional testimony was presented before Senator Haskell's Interior Subcommittee concerning the proposal. Presentations and discussions were held with various interested parties in Washington, including the Congressional Delegation, and a more detailed presentation concerning the state-federal aspects of the proposal was made by the Commissioner and Director to the Department of Interior's Alaska Task Force.

On September 26 the Director announced that a public briefing of the proposal would be held in Anchorage on October 2 with public testimony to be received orally on October 3 with an additional period for written input. On September 30 a very detailed briefing of the proposal was made to both Division of Lands staff and a second briefing to representatives from other divisions within the Department of Natural Resources and representatives of other State departments. On October 1 another very detailed briefing was given to the Press, radio, and television media. Before the public presentation additional detailed presentations were made to various groups which had expressed considerable interest in the ongoing discussions. These included representatives of three affected municipal governments (Anchorage, Matanuska-Susitna Borough, Kenai Borough),

Legislators, and environmental groups. Public presentation on October 2 and the meeting the following night for public input were very well attended and, in response to requests for a similar hearing in Fairbanks, another presentation was made in Fairbanks on October 7. As a result of the media campaign and the public meetings, significant public input was received and a number of meetings were held between the Director and interested parties as well as several additional detailed briefings to groups specifically requesting them. These latter included the Bureau of Land Management, Anchorage Chamber of Commerce, Kenai Borough Assembly, Capital Site Selection Committee, and the Federal-State Land Use Planning Commission. A summary of the input from the public and the various interested groups, as well as the State's response to this input, is detailed later.

Specific Nature of Proposal

The proposal is basically composed of three different parts; a State-CIRI agreement, a CIRI-Federal agreement, and a State-Federal agreement. All aspects of each sub-agreement must be executed before the entire proposal would be binding. In essence, the State of Alaska would make available to CIRI State lands which the Region feels are of like and similar character to those lands which it has historically used. In return, the State would fall heir to approximately one-half of Cook Inlet's 12(c) entitlement in the Talkeetna Mountains, Chakachamna Lake, Lake Clark, and the Kamishak Bay areas. The remaining approximately one-half of Cook Inlet Region's 12(c) entitlement would remain in federal hands and the Federal Government would in turn convey to the State an equivalent amount of acreage in the Bristol Bay area. Additionally, the Federal Government would convey to Cook Inlet certain other lands within the region, including lands from the Kenai National Moose Range, as well as a total of approximately 26 townships to be selected from federal lands outside of Cook Inlet Region.

Because certain Cook Inlet Region village selections have or are likely to impact state, federal or CIRI interests related to Cook Inlet's selections, smaller sub-agreement proposals have been discussed with approximately seven villages or groups. These proposals function very rationally within the framework of the Cook Inlet Region selection proposal. Without the inclusion of these sub-agreements the interests of one or more of the three major parties would be likely frustrated by the existing village or group selection patterns.

Attached as Appendix A to this document is a more detailed breakdown of the specific aspects of the "original" proposal as presented publicly on October 2. Each aspect of the propcsal was specifically keyed by number to an attached map which shows the location of that particular aspect of the proposal. Each aspect was also briefly explained as it pertained to the overall proposal. With only a few exceptions those aspects were the same ones which we had been discussing since last May and, therefore, there was relatively little new with respect to the proposal at that time. Following public input, as described below, and as a result of the U.S. District Court's finding Salamatof and Alexander Creek as certified villages, the proposal was modified and is shown in its final form under the "Current Status" hearing below.

Characterization of Public and Agency Input

The more or less finalized "original" proposal was presented to state agencies and the public in detail during the first week of October. As a result of this process input was received from many sources, primarily the public. This input was used for a series of additional sessions with CIRI in which significant modifications were made. This resulted in the "modified" proposal described later. The characterization below represents agency and public input with respect to the "original" proposal before modification.

As with the public input, other state agencies generally supported the concept of the State's attempts at insuring rational land ownership patterns. One aspect of the proposal, that of the approximately 12 township selection in the Beluga area, generated significant comment from the Division of Geological and Geophysical Survey as well as the Minerals Section within the Division of Lands. This input, both oral and written, emphasized both the amount of known and inferred coal reserves as well as the potential for coal exploitation under various conditions. While general parameters of the coal resource in the Beluga area had been known during the discussions with CIRI, more detailed and specific input from these agencies was requested and received. The specifics of this input may be found in the case file. Input from other state agencies which requested specific alterations or suggestions, e.g. the Department of Highways, was inputted during the modification discussions and this input may again be found in the file. Other agencies generally expressed approval either orally or written of the basic aspects of the proposal.

Public input following presentation of the "original" proposal came in both oral and written form. The vast majority of respondents indicated favorable support for the concept of the State entering the discussions and the general expression was that, with the exception of certain aspects of the proposal, the overall benefit which accrues to the State outweighed any deficits involved. Against this background of significant public support for the concept of the proposal, eight specific areas were singled out which received comment.

1. Mental Health Lands - Testimony brought out the fact, inadvertently overlooked by all parties, that approximately six and one-half townships from within the original pool of land CIRI could select from in the Beluga area had been selected by the State as mental health lands. Input and interest concerning these lands was received not only at the public hearings but

also through several telephone calls from interested members of the public. It might be noted that this finding alone made the extensive public process invaluable, and demonstrates the need for public exposure on all similar complex issues.

2. Coal Deposits - By far the most controversial aspect brought out by the public hearings and subsequent input concerned the inclusion of the "Beluga Coal Fields" in the proposal. Concern was genuinely expressed, although facts, figures and questions were often uninformed in nature. However, the sum total of input at the public hearings, from interested calls and appearances at the Division of Lands by interested parties, and inquiries from several groups indicated a definite feeling that significant acreage of lands with coal potential were felt to be "too much."

3. Insufficient Time - A number of comments were received which indicated that because of the complexity of the proposal insufficient time was available within which to satisfactorily study and comment. Interested parties were understanding of the fact that the "deadlines" were largely a result of a Congressional time schedule beyond our direct control, but the feeling of inappropriate time constraints was still evident. Later announcements by the State that over five weeks were available for public input ameliorated this feeling considerably.

4. State Agency Input - A few respondents indicated that they felt that insufficient input had been received from some State agencies during the negotiation process. While such comments generally indicated an understanding that specific recommendations from all agencies could not necessarily be accommodated in the proposal, the feelings were that all resource aspects should be addressed equally before a final decision is made on the proposal.

5. Legal Aspects - Two respondents raised the question of the authority of the State to enter into such a proposed trade. Their comments were almost exclusively directed at the authority of the State to alienate subsurface resources in apparent contradiction to the Alaska Statehood Act and to the process by which "equal value" was determined.

6. Parks and Recreation Protection - A very significant number of respondents indicated approval of those few aspects of the proposal which offered some measure of protection for future open space and/or recreational options.

7. Accelerated Development - Several respondents indicated a favorable disposition to those aspects of the proposal which, by providing the Native corporations with lands appropriately located and suitable for development, would hasten the settlement and development of these lands in a manner which would favorably impact the State's economy. It was also felt that the location of private development in the Cook Inlet basin was appropriate and timely.

8. Extra-Regional Selection - Comments were received from three regional corporations which protested the out-of-region entitlement for Cook Inlet. These comments centered largely on a fear that CIRI's interests would not be compatible with those of Native residents of other regions, particularly with respect to CIRI's responsiveness to their life styles and subsistence needs. A fourth region, however, testified in favor of the proposal.

At a meeting of the Alaska Legislative Council in Anchorage on November 4, a presentation to the Council concerning the proposed Cook Inlet land trade was made by Mr. Harold H. Gallett, Jr. Mr. Gallett was particularly concerned with the Beluga lands aspect of the proposal. Not being familiar with the

"modified" proposal which resulted from public input of the preceding month, Mr. Gallett's presentation unfortunately conveyed some erroneous information. As a result of the presentation and an ensuing discussion, the Council became very interested in the proposal, and a subcommittee, chaired by Senator Kay Poland of Kodiak, was appointed to look into the matter and to report back to the Council. This subcommittee met in Juneau with the Governor, Commissioner of Natural Resources, and Director of Lands on November 7. In addition to Senator Poland, other Legislators present included Senator Rader and Representatives Smith, Miller, and Specking. The session included a detailed presentation of all aspects of the proposal followed by extensive questioning. The session lasted approximately three and one-half hours. On Monday, November 10, a conference telephone call was held among members of the Legislative Council concerning the proposal and the response of the Council was made in a letter from Council Chairman Genie Chance to Commissioner Martin on November 12. The Council felt that because of the early time deadlines and complexity of the proposal that the Council was in no position to either condone or oppose the trade proposal. Senator Chance did, however, indicate that members of the Council were free to express individual opinions on this or future land trade proposals.

The press was somewhat indecisive in commenting on the entire proposal. The "Daily News" did not discuss specifics, but rather applauded this attempt by government to actively participate in a proposal which would have such a great effect on the State. The "Daily Times" pointed out some of the benefits to be accrued, particularly the aspects of putting lands more suitable for development into native hands at an early time, but also questioned whether all aspects of the trade had been publicized so that a full and complete judgement might be made by the public. More recently, following the interest expressed by the Legislative Council in early November, the "Times" questioned

why the State was even involved in the matter in light of the paper's feeling that the problem was really one between the Federal Government and the Natives.

Generally, press coverage of the entire process has been extensive, and it is safe to conclude that public exposure, for those who chose to follow the issue, was extremely high. The Press briefing given by the State regarding the initial proposal was probably the most extensive ever given on any issue regarding State lands.

Current Status

As a result of public and agency input certain substantial changes were made to the tentative proposal which was made public during the first week of October. In addition, the decision by Judge Gazell in the United States District Court, which found that the villages of Salamatof and Alexander Creek were certified and therefore entitled to select large acreage within areas very important to the agreement, caused other necessary changes to the original proposal since certain aspects of the proposal sought an agreement before a decision was rendered. The significant changes to the "original" proposal, which have resulted in a "modified" proposal, are outlined below.

1. Beluga Area--the original proposal would have permitted CIRI to select 12 townships from a pool of approximately 22.5 townships in the Beluga Area. The modified proposal would permit CIRI to select 13.5 townships out of a pool of approximately 16 townships. The reduced pool reflects the 6½ townships of Mental Health lands which were withdrawn from the pool. This reduction would leave approximately 75 per cent of the measured or indicated coal reserves in State ownership. Despite this very significant diminu-

tion of value to Cook Inlet Region, the modified proposal calls for only 1.5 additional townships which may be selected from the diminished pool. In addition, a much larger area on the coast southwest of the Tyonek Reservation would remain in State ownership for future resource development in that area. Rather than CIRI owning a land corridor from its selected lands to the coast, the State would guarantee a public right-of-way for various resource and other transportation needs.

2. Bristol Bay Area--the original total of approximately 30 townships in the area of the Interior Department's Lake Clark d(2) proposal which were to be traded by the State in return for an equal number of townships in the Bristol Bay Area has been reduced to approximately 25. This change resulted from a determination by the State that it would be of greater benefit for the State to receive title to approximately 5 townships in the Lake Chakachamna Lake area. In addition to the inherent value of these lands, the Interior Department is very interested in these townships for inclusion in its d(2) proposal. For this reason, the State would retain a very strong bargaining position by obtaining title at this time to those lands.

3. Anchorage Bowl Federal Surplus Lands--while the original proposal specifically prevented CIRI from obtaining title to Federal Surplus Lands in the Campbell Tract, Point Campbell and Point Woronzof withdrawals, the modified proposal goes further in also protecting the Goose Lake withdrawal and in guaranteeing transfer of the Campbell

Tract to the State immediately and the Point Campbell and Point Woronzof of those surplus properties to the State or the Anchorage Municipality surplus properties as soon thereafter as possible.

4. Other Federal Surplus Lands Or Withdrawals--the original proposal permitted CIRI to select up to 3 townships of Federal lands in the Cook Inlet region from a pool of Federal surplus property, revoked Federal withdrawals and unperfected public land entries such as homesteads, etc., on an acreage basis. The modified proposal recognizes that such Federal lands may have significant economic values and there is therefore a provision to reduce CIRI's selection entitlement by 1 acre for every $500 of land value selected by CIRI from such Federal lands. In addition, the State is given certain veto and appeal prerogatives to insure that public interests are protected prior to selection by CIRI.

5. Extra-Regional Selections--In response to input by other Native regional corporations which expressed apprehension at CIRI's ability to select lands in close approximation to their land selections, the modified proposal permits affected village and regional corporations outside Cook Inlet to exercise a veto over CIRI's land selections in their 11(a) withdrawals. This will assure the other Native corporations of protection for subsistence, economic or other values. To insure that CIRI would have sufficient lands available to select from, the modified proposal permits CIRI to select from d(1) lands extra-regionally by following a selection process which guarantees both the Federal and State governments a role in determining the location of selections and in protecting each government's own specific interests.

6. Kenai National Moose Range--the District Court's finding that Salamatof is an eligible village immediately impacted the Moose Range with an additional 56,500 acres of selections. Since it appears the Federal government may appeal the decision, the impact and final date of land selections on the refuge are unknown at this time. The modified proposal therefore assumes a maximum selection by all Native corporations of approximately 108,000 acres. If the Federal government appeals and is successful, then the lands otherwise selected by Salamatof would probably go the CIRI as shown in the original proposal. However, if Salamatof does remain an eligible village, CIRI would obtain lands in the refuge only to the extent that some of the villages were willing to trade out of the Moose Range and make lands available for CIRI. In essence, therefore, total impact upon the refuge would remain roughly the same as in the original proposal; the only difference would be which corporation would own the lands.

7. Lake Clark Village Selection Tradeouts--as a result of the District Court decision which found Salamatof and Alexander Creek as eligible villages, the acreage of village selections in the Lake Clark area approximately doubled. Although the State would still trade out those village selections on a 1 for 4 basis, total State acreage involved would remain about the same. The only differences from the original proposal would be that 4 rather than 2 villages would be involved, and the Federal government would be required to provide any other additional acreage from within other village deficiency withdrawals.

Eight specific aspects of the original proposal were commented upon during the public input process. These aspects are outlined above on pages 15-17. Aspects number 1 (Mental Health lands) and 2 (coal deposits) were very substantively addressed and the changes described under number 1 of current status above. Aspect number 3 (insufficient time) has been taken care of by the continued Congressional postponement of action which has provided over 60 days for public reaction and input. Aspect number 4 (State agency input), if a valid basis for comment ever existed, was also addressed during this 60 day period. Contacts with most state agencies, particularity the Division of Geological and Geophysical Survey, resulted in additional comment and input from these agencies. The Division of Geological and Geophysical Survey in particular submitted additional memoranda and reports concerning resource values in the Beluga area. Items number 6 (Parks and Recreation Protection) and 7 (accelerated development) were merely supportive of certain aspects of the original proposal. These aspects were retained in the modified version. Aspect number 8 (extra-regional selection) was specifically addressed in number 5 under current status above. Only aspect number 5 (legal aspects) of the public input summary has not yet been specifically addressed in this memorandum. These legal points of the proposal are discussed in greater detail in the following section.

Major Considerations Before Decision

Two important considerations in all land exchanges were emphasized by a few members of the public and also by the Special Legislative Council Subcommittee:

1. Is there existing legal authority to conclude an exchange?
2. Would the State be receiving at least equal value for the value it gives?

These aspects had, of course, been investigated by the State at the onset as an integral part of any such decision-making process.

1. Authority - It is the opinion of the Attorney General and, we believe, of most other attorneys who have addressed the matter in detail that the Executive presently has State statutory authority to undertake this proposed land exchange. Authority has apparently existed since the enactment of the Alaska Land Act shortly after Statehood for the State to conclude an agreement such as this land trade proposal. Under AS 38.05.020(b)(2), the Commissioner, and, under AS 38.05.035(a)(14), the Director, have several times since Statehood entered into land trades or other agreements affecting lands that were not treated as sales or leases under the Land Act. Additional specific authority for land exchanges such as the present proposal was provided by the 1972 Legislature in the form of AS 38.95.060 as a counterpart to Section 22(f) of ANCSA. Among other things, this law permits the State to exchange land or interest in land with a Native corporation for the purpose of affecting land consolidations or to facilitate the management or development of the land.

The authority cited above does not prohibit the alienation of minerals as proposed in the trade. Although there is no State statutory obstacle, the Statehood Act prohibition against such alienation, found in Section 6(i), is regarded by some as a Federal constraint. Many persons take the position that Section 6(i) has been amended by implication in Section 22(f) of ANCSA so that it does not come into play in such exchange transactions. To erase any questions, the Federal Legislation which will implement the land

trade proposal will specifically address this matter to remove any doubt as to Congressional intention regarding state authority to enter into such a proposal.

2. Equal Value Consideration--In determining whether equal value will be received for value given in an exchange such as this proposal, there are basically two different types of "values" which require consideration. One is a value which can be determined with reasonable accuracy to have an economic value, often expressed in dollars. Secondly, there is value which either may be capable of expression in economic terms but for which a specific dollar value cannot be estimated with any particular degree of certainty at this time, or for which an economic value may never be specifically determined. However, values in this second category are very real and a reasonable person would recognize their existence and importance in computing the overall value received or given in a trade. With respect to this proposal paragraphs A and B below outline, respectively, the two types of values mentioned above.

   A. Economic Values--The information presented below represents a summary of economic values identified with respect to State interests in the proposal. The information is based upon reports from various State sources and is expressed in terms of current 1975 dollars, i.e. economic values of resource potentials such as the Beluga coals have been discounted back to present day value. Only those resources specifically known to exist were valued. For example, although there are unquestionably very real and significant subsurface economic mineral values on lands which the State

would receive under the proposal, since they are as of this time unidentified no attempt was made to infer a particular economic value. In the Beluga area where certain measured or indicated reserves exist, however, estimated valuations were made.

Under the proposal the State would exchange approximately 21.2 townships of its land in return for 51 townships of Federal land and the right to select, at the State's discretion, an additional 20 townships. Also, the State would receive title immediately to the Campbell Tract in the heart of the Anchorage Bowl as well as a commitment to an expedited transfer of the Federal surplus lands at Point Campbell and Point Woronzoff. In estimating the economic value of the lands to be given and received by the State, estimates were made on the value of the land itself, any timber thereon, and any known mineral resources thereunder. The table below summarizes these values. Documentation may be found in the files.

TABLE I.

ESTIMATED ECONOMIC VALUES, IN PRESENT DOLLARS, OF LANDS GIVEN AND RECEIVED BY THE STATE

LANDS GIVEN BY STATE

LOCATION	ACREAGE	VALUES ($MILLIONS) LAND	MINERALS	TIMBER	TOTAL
Scattered Tracts	69,721	15.7	---	1.8	17.5
Kenai Penn.	107,650	16.1	---	1.3	17.4
Beluga	314,640	22.0	15.9[a]	1.2	39.1
TOTAL	492,011	53.8	15.9	4.3	74.0

LANDS RECEIVED BY STATE

LOCATION	ACREAGE	VALUES ($MILLIONS) LAND	MINERALS	TIMBER	TOTAL
Kamishak Bay	276,480	11.1	---	.2	11.3
Koksetna R.	161,280	6.4	---	.2	6.6
Talkeetna Mts.	161,280	6.4	---	.1	6.5
Bristol Bay	576,000	23.0	---	---	23.0
Campbell Tract	3,930	5.9[b]	c	c	5.9
Pt. Campbell	1,179	6.6[d]	---	---	6.6
Pt. Woronzoff	593	4.2[d]	---	---	4.2
Capt. Cook Rec. Area	4,800	.8	--	.1	.9
TOTAL	1,228,742	64.4	---	.6	65.0

NOTE:

a. The 15.9 value for the Beluga Coal resources is based on the middle of three scenarios for production in that area (pessimistic, medium, optimistic). The value has been discounted at eight percent from future revenues to present dollar values. The most optimistic scenario, which makes several very optimistic assumptions, would yield a discounted value of $38.2 million (figures attached to memo).

b. A very conservative figure of three thousand dollars per acre has been assumed for the Campbell Tract. This figure has then been discounted fifty percent under the assumption that if the State did not gain immediate title to the area under this proposal it would still stand a respectable chance of obtaining the land at some time in the future.

c. Although other values including timber and specifically gravel are found on the Campbell Tract, sufficient data were not immediately available to make a good estimate of value. However, the value of gravel alone, located as it is within the center of the Anchorage Bowl, would be very substantial, certainly totalying in the millions of dollars.

d. As with the Campbell Tract the values of the Point Campbell and Point Woronzoff surplus lands has been discounted to recognize that the State might obtain these lands at some unknown future date in other ways if the proposal is not executed. However, because these lands are outside of the two-mile radius of the old city boundaries, and because they are not as important as the Campbell Tract for other public purposes, there is a measureably greater probability that these surplus

Table I. NOTE d. continued.

lands would go to CIRI under some other form of settlement of their claims. Therefore, the conservative values of $8,000 and $10,000 per acre, respectively, are further discounted only thirty percent.

To the values to be received by the State as estimated above must be added values which, if the proposal is not consummated, might be lost to the State. The two most prominent values in this category are the ninety percent royalty revenues which the State receives from oil production in the Swanson River area of the Kenai National Moose Range, and 26 townships of state selected land which CIRI would select if they prevailed in their court suit and the Secretary made such lands available for native selection by refusing to convey them to the State. Any estimation of the value of these two possibilities to the State must assume certain levels of probability that the situation would occur without execution of the proposal.

Swanson River Revenues--There are any number of factors which may enter into assuming a probability that the Secretary or the Congress might convey to CIRI substantial subsurface title in the Moose Range. While only 15 months ago such a possibility would have seemed small to the State, ownership of 15 townships of Moose Range subsurface estate was offered to CIRI by the Secretary in September of 1974. Had CIRI accepted the offer at

that time the possibility of that event would have been one-hundred percent. In view of both that offer and Congress' assurance to CIRI of some settlement of their land claims problem, and assumption of a .5 probability does not appear unreasonable. Using State revenue projections for oil and gas royalty receipts from the Moose Range for only the next 14.5 years, and discounting those revenue projections at eight percent, a figure $41 million is obtained. Use of a probability of .5 yields an estimated value of $20.5 million.

Chalatna Lake 26 Townships--In assuming a probability that the State might lose title to lands currently selected south of Mount McKinley National Park in the Lake Chalatna area two probabilities must be estimated. The first is the possibility that CIRI would prevail in its court suit. Assuming that CIRI did prevail, a probability must then be estimated as to whether the Secretary would attempt to break the 1972 out-of-court settlement of Alaska v. Morton and whether he would be successful in that attempt over almost certain State court action. Numerous agruments may be proposed regarding these two probabilities but for this analysis probabilities of 50 and 40 percent respectively are used. Applying these probabilities to an estimated current land value for the 26 townships of $24.0 million and an estimated value for timber of $3.3 million, a value of $5.5 million is found.

A third value which must be estimated is that of the

additional 20 townships which the State may select at its discretion. Although statehood selection entitlement would be used, three factors must be considered. First, there is a possibility that the State may never be able to exercise its full selection rights under the Statehood Act and that the State must look closely at every opportunity it has to select lands. Secondly, the lands which could be selected are, relative to the lands that will be remaining after implementation of ANCSA and settlement of the d(2) question certainly in closer proximity to existing state lands and populated areas. Thirdly, an exercise of State selection rights would be the first selections under the Statehood Act in the past four years. In other words, the "right to select" certain lands now that are in close proximity to existing state selections is in and of itself of value. Using the very conservative total value for these lands of $40 per acre, and discounting the 20 township selection right by a factor of two-thirds to account for the use of selection entitlement, the result is an estimate of $6.1 million.

Thus, the total estimated value of the three factors described above is $32.1 million. This total, when added to the estimated appraised values cited in Table I. above, gives a total estimated economic value to the State of $97.1 million. To this total must be added or subtracted the values described below to which a reasonable economic value cannot be applied at this time, or perhaps ever,

with any degree of certainty.

B. Other Values--As mentioned earlier, there are two types of other values which must be taken into consideration for purposes of evaluating this proposal. First are economic values which cannot be identified with any reasonable specificity at this time, and secondly there are those values which might never be capable of having a specific economic value attached to them, but which are unquestionably of significant value none the less. Paragraphs number one and two below present, respectively, positive and negative values to the State associated with the present proposal. Although certainly not exhaustive, the listing attempts to outline the major non-economic values involved.

1. Positive Values--the following positive values would accrue to the State should the proposal be consummated.

(a) CIRI Court Suit--as explained earlier in this memorandum, if Cook Inlet wins its appeal the State might lose not only considerable acreage from its present selections south of Mt. McKinley National Park, but it might also lose substantial additional lands should the September 1972 out-of-court settlement with the Secretary be abrogated. In view of the District Court's decision that the Secretary was in error concerning his finding eleven villages ineligible, Cook Inlet Region's chances

of success with its court suit were measurably increased.

(b) Moose Range Surface Protection--private surface ownership within the Moose Range would be kept to a minimum, thus protecting the very significant wildlife and recreational values of the Moose Range. The Moose Range is also a state wildlife refuge and its already tremendous value for recreational pursuits including hunting, fishing, canoeing, etc., will continue to grow with increased settlement and development of state and private lands outside the refuge on the Kenai Peninsula. Some, however, would argue that maximum Moose Range lands should be given to the natives so that development may occur.

(c) Suitable Lands In Private Ownership--the state lands received by the Native corporations are lands suitable for settlement and development because of physical characteristics and location, thus substantially reducing future costs to the State to provide services to these areas. Additionally, the Native corporations receiving these lands will be in a much better position to develop them at an earlier date, thereby stimulating economic development and providing an

additional tax base both to the State and to the local governments involved.

(d) Kamishak Bay Lands--under the proposal the State would receive title to approximately 12 townships of land on the west side of Cook Inlet on Kamishak Bay. These lands would represent the only State presence on the west side of Cook Inlet for at lest 400 miles south of Kalgin Island. Kamishak Bay itself, owned by the State, is believed to have significant oil and gas resource potentials and these coastal lands represent the only feasible areas for onshore development facilities. This proposal would put these lands in State hands. Additionally, the terminus of the Interior Department's "western transportation corridor", which originates in Petroleum Reserve Number 4, terminates on Bruin Bay which the State would also receive.

(e) Talkeetna Mountain Land--the State would receive approximately 14 townships in the Talkeetna Mountains area, some of which would be located immediately adjacent to currently State patented land. Three of these townships are contiguous to one of the three final sites to be considered for the new State Capital. Additionally, the proposal would bring to

State ownership lands otherwise selected by Native groups which would be included in the current Talkeetna Mountain State Park proposal. The land trade would permit a manageable park boundary proposal to be established, thus obviating the inevitable costly routine of buying back private property in the future. Also, watershed protection for a new Capital or for other settlement to the west would be assured.

(f) Addition To Captain Cook Recreation Area--the proposal would insure that a minimum of 7 sections of land would be added to the Captain Cook Recreation Area from federal lands within the Moose Range. Otherwise, Native selection of these sections would result in a significantly less manageable recreation unit.

(g) Public Lands--the proposal would insure that lands with significant public interest would remain in public ownership, particularly in the vicinity of Lake Clark. In addition, the State would receive lands in the Chakachamna Lake area which would give the State significant bargaining power in influencing federal action with respect to hunting, mining or other State interests in any permanent federal withdrawal in the Lake Clark area.

(h) Increased State Presence In Bristol Bay--the proposal would increase the State's presence in the Bristol Bay area by gaining for the State approximately 25 townships of d(2) land in addition to the 12 townships on Kamishak Bay. The 17(d)(2) land would, of course, be otherwise unavailable to the State. This enhanced state position will strengthen the State's bargaining power with respect to the proposed National Resource Range in the Bristol Bay-Lake Illamna area. If the Resource Range proposal is adopted as presently proposed, the State, with the single exception of the Wood River-Tikchik area, would be totally removed from any significant land ownership position west of Cook Inlet.

(i) State Interests In Other Federal Lands--under the proposal other federal surplus lands and unperfected public land entries which might go to CIRI within the region would be subject to a State veto and/or appeal process to protect State and public interests in these lands. Since the eventual settlement CIRI receives, whether by agreement, legislation, or by court action, will undoubtedly include these lands, the proposal represents the State's only opportunity to participate in protecting the public interests on these lands. As an example, the Bradley Lake Power Withdrawal is specifically protected from Native ownership; if the withdrawal should

be revoked, it could be selected by the State.

2. Negative Values--the following negative values would accrue to the State should the proposal be consummated.

(a) Beluga Coal Management--the proposal would remove the State from its current position of almost total ownership of lands in the Beluga area by putting into CIRI's hands approximately 25 percent of the measured and indicated coal reserves and surrounding lands which may contain additional reserves. While the State would still of course have very substantial environmental controls over mining through its air and water quality standards, etc., and while it could pass surface mining legislation applicable to private lands, it would lose the additional landlord power to control strip mining operations. However, with regard to revenues, the State would lose its royalty interest, but all informed opinion agrees that a severance tax would yield the best returns, and is the proper course for the State to follow.

(b) Loss of Port Area--approximately 7 sections of land northeast of the village of Tyonek with potential for industrial development and docking facilities would be transferred to native hands. Perhaps the best site on the west side of northern Cook Inlet, which is located just to the south of these 7 sections, is already owned

by the village of Tyonek. The State would retain, however, another site of at least equal suitability and potential just west of the Tyonek village lands. This latter site is the one which has benn primarily suggested and studied from the standpoint of the use and/or shipping of coal from the existing coal leases in the Beluga area.

Economic Summary--As mentioned earlier in determining equal value two types of value have been used; value in economic terms and value in a sense which cannot be strictly expressed in dollars. As outlined above, the economic values themselves which accrue to the State are in excess of those values which the State relinquishes. These are calculated as shown below.

TABLE 2.
SUMMARY OF ESTIMATED ECONOMIC VALUES ($MILLIONS)

GIVEN BY STATE

Existing values relinquished	74.0
TOTAL	74.0

RECEIVED BY STATE

New values received	65.0
Existing values not lost	32.1
TOTAL	97.1

To the total economic values received by the State the non-economic values cited above, both positive and negative, must be added. Since the degree to which these non-economic values accrue positive or negative benefits to the State is somewhat subjective, certainly no quantifcation is possible. However, they are very important considerations and any decision making process must reasonably incorporate

them in determining the overall equal value consideration.

Finally, it should be emphasized that the agreement represents a negotiated settlement, which is an extremely important factor. First, it can certainly be suggested that negotiation, particularly regarding non-quantifiable items, is man's best procedure for reaching equity. While this is not relied upon for legal foundation here, it is nonetheless crucial for public policy reasons.

Second, a settled three party negotiation implies that each has left the bargaining feeling that either he got a fair and equal share, or more likely, a better share than the others. The Director would certainly assert the latter in terms of a negotiated value for the State, but would recognize that each party may feel the same for its own reasons and seek to demonstrate this to its constituency or higher authority.

Third, it is important to convey some sense of the "paths not taken" regarding trading items and other values. While no blanket conclusion is possible, there can be every assurance that a comprehensive effort took place, over many months, to seek out and discuss a multitude of alternatives before reaching the agreement herein.

Conclusions and Recommedations

This memorandum of transmittal has attempted to outline in a structured fashion the basis for State participation, the process of that participation, and the results as found in the proposal. It is my conclusion that State participation

In the modified proposal as described above is in the best interests of the State and that the State will receive considerable excess value for the value it relinquishes. As your approval and the concurrence of the Governor are needed to authorize State participation in this proposal, this document can serve as basis for that decision, augmented by any further information you may require. In this particular case since you have been very closely and continuously involved with the process, and as the Governor has been fully briefed at several different times, I believe most of the aspects are suitably covered above, and in the complete files on this matter.

While it is my opinion, and that of most others I know who have addressed the matter in detail, that the Executive Branch presently has the state statutory authority to execute this proposed land exchange, it is also true that questions have been raised by members of the public and by legislators concerning the adequacy of this authority. While I believe that these questions would certainly be answered by the courts in the executive's favor, the process of litigating a test case would be inordinately time-consuming. That intervening litigation period would protract the commencement of passage of lands under the agreement, a consequence which all parties regard as undesirable, and possibly fatal, if the basic merits of the agreement are accepted.

There is no doubt that the proposed exchange cannot come to pass without prior federal legislation clearing its way under NEPA and Section 6(i) and dealing with other matters of implementation. The opportunity - perhaps the only opportunity - for such legislation is upon us now with the omnibus ANCSA amendments bill.

After the Congressional legislation is passed, it of course will be necessary for the State to assent to the exchange. While the Commissioner is authorized under existing law to give that assent, unilateral executive action on a matter of this

magnitude would be inconsistent with the policy of the present administration that all important social institutions should have the opportunity to participate to the fullest extent possible in such decisions. Therefore, I believe the State should structure the proposed transaction so as to maximize the Legislature's ability to participate in the decision. (Indeed, the Administration endeavored to involve the Legislature throughout the public review process as the proposal has been developed.) The problem, of course, is that there is no mechanism by which the federal government can legally "negotiate" the matter through the Legislature during the session, for Congress must act now to get federal authority for a specific proposed transaction. Nor is it likely under our Constitution that the Legislature could, or would choose, to do so.

Given these premises, the only opportunity that the State has to insure that the Legislature may pass upon the merits of the proposal is for Congress to enact legislation empowering the Secretary to consummate the transaction (removing federal obstacles to the State's participating), such legislation to be subject to the State's subsequent consent. The state administration, in its turn, pledges that consent to the Congressionally legislated "offer" will be forthcoming, if at all, only after review and consideration by the Legislature. An action by the Legislature disapproving the exchange should result in an action by the Governor denying consent.

If the decision is made to seek legislative review the time factor is particularly important. For several reasons, including the Congressional need for certainty the inexorable progress of Cook Inlet's appeal, and the dynamic nature of land status in Alaska, final action by the State would be needed as soon as practicable consistent with the Legislature's need to have a thorough opportunity to review the proposal in sufficient detail to make responsible public policy. I believe we would be in a position during the first week of the session to thoroughly brief

members of the Legislature and make available to them any information we might have concerning the proposal. Under that scenario it would appear that 50 to 60 days should be sufficient time for the Legislature to thoroughly review the proposal, particularly in view of the already widespread publicity and general public awareness of the various aspects of the proposal.

I close with the request that action taken affirmatively and expeditiously on this matter as I believe it to be a unique, perhaps singular, opportunity to achieve a vital series of public and private objectives. It is important, and in my view, right.

MEMORANDUM

State of Alaska
Department of Natural Resources
Division of Geological & Geophysical Surveys

TO: Michael C.T. Smith, Director
Division of Lands

DATE: January 2, 1976

FILE NO:

THRU: Guy R. Martin, Commissioner
Department of Natural Resources

TELEPHONE NO:

FROM: Cleland N. Conwell CNC
Mining Engineer

SUBJECT: Mineral Analysis of Proposed Cook Inlet Land Trade

On or about the 8th of October, Ross Schaff, Don McGee, and I met with you in your office to advise you of the value of coal land the State was proposing to give away. It is my recollection that we advised you at that time of the value of coal on these lands and of work in progress by the private sector in exploring the Beluga coal field. As I recall, all three of us, expecially Ross and I, expressed personal disproval of the trade. It was and is our opinion that some of the most valuable land in the State is being traded for land that has little or no economic potential.

In direct comment on the articles by Mr. Galliett:

Don McGee and K. O'Connor in AOF 51, page 7, estimate 7.8 billion tons of coal in the Beluga field. Therefore, Mr. Galliett has a reference from a report of the Alaska Geological Survey. My only comment on the first article is that recovery of 50% of the coal is low by todays standards.

In reference to the second article, it is my understanding that Fish and Game have control of fishing and the streams. I believe that this is covered in Section 16 of the State Statuates, so there is no need to control the Lake Clark or Iliamna areas for the fishing potential.

In the 3rd article, Galliett appears to be accurate. I am sure we could check on the number of natives and the allocation, but the figures are approximately those that I have read.

With regard to the specific "Lands to be given by the State to CIRI":

Pt. MacKenzie (Appendix C - 1.B)and This is within the Anchorage area and is a valuable section for port facilities.

Knik-Willow (Appendix C - 1.B and 3) — This is an excellent recreation area near An[illegible]ge. It contains the Nancy Lake State Recreation area, Meadow Creek [illegible]ground, and many lakes. There is both a coal potential and oil and gas potential in the area. Coal at one time was mined at Huston.

Kashwitna (Appendix C - 1.B) — This is prime agricultural land - Ref: Alaskas Agricultural Potential, Alaska Rural Development Council, Publication No. 1, 1974. It also contains a site selected for the future capitol of Alaska. It is accessable by road and railroad, and has many home sites. The land has potential for fossil fuels and uranium.

Chickaloon (Appendix C - 1.D and 3) -- This is excellent coal land and part is under coal lease. Coals in this area have a higher calorific value than the Beluga area, i.e., 7,200 Btu Beluga vs. 12,000+ Btu Matanuska. Some of the Matanuska coals have coking qualities. Therefore, Matanuska coals have a higher market value than Beluga coals. The railroad right-of-way to the area is retained by the Alaska Railroads. There are excellent home sites in this area.

Alexander Creek (Appendix C - 1.D and 3) — Coal, oil, gas, and uranium potential.

Salamatof (Appendix C - 3) and Kenai Peninsula (Appendix C - 1.E and 3) — These are excellent coal lands. The coals are nearly horizontal, therefore, favorable for mining. Several beds at least 5 feet thick underlie the area. Undoubtedly there are at least 11.7 billion tons of coal in these areas. In addition to the loss of coal there would be a loss of recreation along the beaches of the peninsula. This includes both clam digging and fishing. I have been informed by native groups that they intend to protect these rights, and prohibit non-natives from trespassing. A law suit on this matter is presently in court (Edwardsen vs. Norton). These lands also have a high agricultural potential. In the case of strip mining the agricultural potential could be utilized the year following cessation of mining.

Beluga (Appendix C - 2(a)) — This area contains the outcrops of the Capps and Waterfall coal beds which can have respective thicknesses of 27 and 50 feet. Some sections could contain 70 million tons of coal with a stripping ratio of less than 3 to 1. One township could contain 2.5 billion tons of coal. This is also an area of high agricultural potential, and experimental work has proven that reclamation can be done after strip mining.

In regard to the lands to be given to the State by the Federal Government:

a In general, these lands are underlain by Jurassic intrusives that have a low mineral potential for hard minerals, lack equivalent agricultural potential, lack the recreational value, because of inaccessability, and, if not selected by the natives might still be open to selection by the State.

In regard to the report by Dobey, Welch, and O'Connor:

There are many misleading statements in the report. I find errors in the calculations regarding the discounted cash flow. The Stanford Research Institute has a report issued in 1975 that gives figures that conflict with those of Robert Dottge. Nevertheless, assuming the inaccurate figures do have meaning, should the State give away such valuable revenue producing land?

By a separate memorandum I am requesting the report by Dobey et. all, be kept for in house use and not issued as an open-file report by the Division of Geological and Geophysical Surveys.

MEMORANDUM

State of Alaska

Department of Natural Resources
Division of Geological & Geophysical Surveys

TO: Guy Martin, Commissioner of Natural Resources

FROM: Gil Eakins, Acting State Geologist

DATE: January 2, 1976

FILE NO:

TELEPHONE NO:

FROM: Cleland N. Conwell
Mining Engineer

SUBJECT: Economic Resource Analysis of Measured and Indicated Coals November 28, 1975 P.L. Dobey, J. Welch, K.M. O"Connor

At the request of Gil Eakins, Acting State Geologist, I have reviewed the subject report. I find that the report is misleading, contradicts Alaska Geological Survey open file report #51, is inaccurate and biased. I respectfully request that the report not be published as an open file report under your name and that of Ross G. Schaff. It may be of some use to Mike Smith within the department, but I feel that the quality is too low to justify publications as a Division Report. If published, the report certainly should be reviewed by Ross Schaff beforehand.

MEMORANDUM

State of Alaska

Department of Natural Resources
Division of Geological & Geophysical Surveys

TO: Michael C.Y. Smith, Director
Division of Lands

THRU: Guy R. Martin, Commissioner
Department of Natural Resources

FROM: Gilbert R. Eakins GRE
Acting State Geologist

DATE: January 2, 1976

FILE NO:

TELEPHONE NO:

SUBJECT: Mineral Analysis of Proposed Cook Inlet Land Trade

In response to your letter of December 29, 1975 to Ross Schaff, I requested Cleland Conwell, State Mining Engineer, to review the three newspaper articles by Harold Galliett and again to assess the tracts of lands involved in the proposed land trade.

I concur with Mr. Conwell's assessment that it is not in the best interests of the State to make the proposed land trade. A purely economic view indicates a high potential dollar value of the tracts to be traded to the Cook Inlet Native Association. Large reserves of quality coal are known, agricultural lands are present, and a resonably good potential exists for petroleum and uranium. In addition, the lands to be given to CINA have wisely been selected near populated areas and where industrial and population growth may be expected. We believe the potential revenues are very significant and that an attempt to put a discounted cash value on the resources today is not a fair evaluation.

In contrast, the lands to be received by the State in the trade do not appear to have an important mineral potential, are relatively inaccessable, and are not suitable for development.

cc: Ross Schaff, State Geologist

Jan. 1976

The Honorable Chancy Croft
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

In my State of the State message, I laid before the Legislature the issue of the Cook Inlet Land Exchange. In doing so, I made the following statement:

> Alaska's land, perhaps more than the offshore oil and gas programs, hits Alaskans where they live. This administration believes that sound land ownership patterns and practices are important and we will not hesitate to use State power to influence them when in the public interest.

I continued by expressing the further commitment of the administration to take a major role in land decisions seeking to "balance the proper rights of Alaska's Natives with the long-term interests of the entire Alaska public."

Setting forth the Cook Inlet exchange specifically, I indicated the importance of the matter and my desire that it be the subject of thorough Legislative scrutiny:

> Perhaps the boldest of these (land) actions has been the Cook Inlet Land Exchange. Controversial from the first, this transaction is as large and complex as the issue it was intended to resolve. Pursuant to a Congressional request, we worked for months with the other parties for a settlement. More important, support for it has grown as its logic becomes apparent.
>
> Now, though not obligated, I am bringing it to the legislature with confidence, having seen it move through Congress supported by our entire delegation. Should you disapprove it, I will not act, but I earnestly solicit your approval.

By now, this issue is well-known to many Alaskans, as it has had extensive press coverage, has been the subject of an extensive public process, has been reviewed by a special Legislative Council subcommittee, and has been the subject of full Congressional review and action.

In spite of this, and in spite of my conclusion that State participation in the agreement is authorized by existing law, I believe full Legislative review is in the broadest public interest on a matter of this importance and scale.

By the terms of the document entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area", incorporated in Section 12 of the recently passed amendments to the Alaska Native Claims Settlement Act (P.L. 94-204), the consent of the State to the agreement must be given within 60 days of the commencement of the 1976 Session of the Alaska Legislature. I have stated my intent that such consent shall be given unless the Legislature disapproves State participation within this period. Should disapproval occur, I will withhold my consent for State participation.

The matter is thus submitted to you for oversight and policy review, and the attached material should be considered in addition to other public information on this matter and material earlier submitted to the special Legislative Council Subcommittee. Additionally, you have my pledge of full administration cooperation to further explain and illuminate the exchange agreement as your procedures indicate.

The materials attached are intended to permit an orderly analysis of the agreement, touching on the issues critical for Legislative review. In particular, there is a discussion of the considerations that entered into the deliberations, the alternatives as perceived by the State, and the economic evaluations that have been made. Most important, the documents trace the history of public participation and input into the agreement and the extent to which the final agreement reflects concerns stated by legislators, local governments, other Native Corporations and the public at large.

The exchange agreement, the legal and historical conditions which necessitated and permitted it, and the process by which it was formed are unique and critical to an understanding of the entire issue. So is an understanding of the paths not taken, or the consequences of a failure to take such an action. The entire Alaska delegation supported the agreement, and Congress acted to carry it into Federal law. When the bill was signed by the President on January 2, 1976, it placed the matter before the State and I am seeking your review.

In the House report that accompanied the federal legislation on the exchange, the Committee on the Interior and Insular Affairs noted that the document "harmonizes conflicting interest, seeking to adjust an equitable settlement for Cook Inlet Region consistent with the needs of Alaska and the public at large... It seeks to resolve harmful jurisdictional conflicts and arbitrary ownership and conserves for public use lands that should have that status." I agree.

I submit this set of documents to you cognizant of the care, delicateness and thoroughness that has been the hallmark of the evolution of the agreement, and seek your consideration of the land exchange agreement as the final step in this important endeavor.

Sincerely,

Jay S. Hammond
Governor

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Joint Meeting of the House and Senate Natural Resources Committees
Jury Assembly Room, State Court Building, Anchorage, Alaska
Saturday, February 7, 1976

(tape one)

: ...people somehow feel that the Congress of the United States has the authority to liberalize what State administrators can do with the authority that they have been given by the State Legislature. This is absolutely false; Congress cannot release State administrators from the responsiblities of the State Constitution and State Statutes. Only the Legislature of the State of Alaska can do this. So whatever Congress says or whatever you may think Congress may have said with respect to the supposed amendment of the Statehood Act, it's irrelevant. What the administration can do, must be done within the framework of the laws which you have passed or which you will pass. So in no way is this trade related to what Congress has said or has not said with respect to the section of the recently passed Omnibus Act. I would like at this point, since I believe that we will have a substantial amount of testimony today from interested members of the public concerning one aspect of the trade, that is the trade involving lands in the Beluga area, to have Mr. Ross Shaff explain in a short summary form some of the points that were raised in the document which has been put out as an open file report by the Division of Geological-Geophysical Survey, namely this yellow report which a number of you have and I see Senator Rader reading now, entitled "Economic and Geologic Studies of the Beluga/Capps Area and Geologic Resource Occurances in the other areas of the Proposed Cook Inlet Land Trade." We feel that this is appropriate at the outset to define a few of the terms and parameters which you may hear mentioned today so that everyone here will be able to understand when a term's used that, hopefully, everybody is using it in the same method. And so I would like at this time to ask Ross to summarize that report.

Sen. Poland: As each of the people speak, we would appreciate if they would give their names and position in the department (IA)

Shaff: Senator Poland and members of the committee. My name is Ross Shaff and I'm the State Biologist and as such, I'm Director of the Division of Geological/Geophysical Surveys of the Department of Natural Resources. Traditionally, our State surveys as well as the United States geological surveys, our main function has been to provide information in part about land areas if possible and to be involved in policy decisions. Since the Cook Inlet State land trade became an issue, our survey has provided as much information to various interested parties as possible including the Division of Lands and the Commissioner of Natural Resources. We thought it might be helpful to the Legislature if we could compile as much of this information that has been submitted to other people into one report and this is a preliminary open file report which I believe was distributed by the Commissioner a few weeks ago. The authors of this report are present here today to answer any of the details of the technical questions which you may have. Actually our interest in the Cook Inlet Basin began some time ago and there are other detailed publications of our survey, Open File Report #51 dealing with coal resources in Alaska in general. And Open File Report #74 dealing with Cook Inlet coals in particular. This Open File Report then is essentially a summary of information that we have access to and would like to share with the Legislature.

(IA - inaudible)

The report is divided into three parts; part one speaks specifically to the reserves that we estimate are present within the land trade area in the Beluga region. This report was done by Don McGee who is here today and he'll answer questions as to how we arrived at these figures and so forth. His best estimate of known coal reserves in the Beluga land trade area only 570 million short tons. The hypothetical reserves within the land trade area, amounts to 2 billion short tons. This does not include the 1.6 billion known short tons in the mental health lands. These figures are only for the land trade area within the Beluga region. I think it is very important that we come to a clear definition as to what we mean by known reserves and hypothetical. We have seen in newspaper articles very large figures without a qualifying adjective to indicate whether they're talking about known coals or hypothetical. There is an established terminology, I say established - generally accepted terminology for known and hypothetical which are the two terms that we've used mainly in our report and I think the easiest way to say this is that in the case of known recoals, we're 95% sure that those coals are there. We are not saying necessarily that the coals are economic, that they are recoverable; we are saying we know those coals exist in a given region. When we're talking about hypothetical coals, we are in the realm of speculation and we are really saying that in our professional opinion the geological setting is adequate for the formation of coals and that it is probable that those coals exists and we must make a few assumptions as to the thicknesses of coals based on very scattered data and arrive at some very broad figures. Actually, this hypothetical estimate will be different depending upon the operator or the investigator.

Part two of our report speaks to the loss of royalty income to the State of Alaska if the Beluga coals are transferred to CIR. The study that we did shows two main things; one is that the income to the State of Alaska in terms of royalty on coals is really a function of the rate at which those coals are produced. Inasmuch as the royalty is based upon ten cents per ton, the royalty may be moved upward or downward, but based on a tonnage factor. Pat Doby is the author of this report; he is here today to answer specific questions on this and to give you some summary numbers of this part of the report - our total estimated accumulative to the year 2025 would range between 84 million dollars and 650.9 million dollars. If we discount those figures at 8% to present day values, we would be talking between 6.5 million and 67 million. If we discount them at 10%, we would be talking between 3.7 million and 42 million as income to the State. This does not include rental fees or lease fees. Now the royalty would be the largest amount of money of income to the State. This is what this study points out.

The third section of our report deals with the other trade areas and here we are more or less in the realm of speculation because of the uncertainty of the actual land that will be traded. I would point out that the third section simply indicates the kinds of resources that we know to exist in the trade areas. Where possible, we give an estimate of known coal reserves or known metallic deposits and so forth. In the other trade areas and in the Beluga-Capps trade area, our estimate is that we are dealing with a total of 895 million known short tons of coal. So that in terms of the total trade, the State would be trading away a total of 895 short tons of known coal. In terms of hypothetical coal, and again the figure of hypothetical reserves are very speculative, we are probably talking about 50 billion tons would be our estimate. We have the figure before us that we would like to have clarified at some point and that is the range of figure for recoverable coal in the trade area which ranges between 4 and 17 billion tons. This was in a newspaper article. We have no idea how this particular figure was arrived at. Actually, when we look at the 50 billion total, hypothetical, we are

not really talking about 50 billion because our estimates for the hypothetical reserves, for example in the Kenai Peninsula includes the entire Kenai Peninsula and we are not including specific townships (IA) in consideration. Just for your information, in comparison to the total hypothetical coals in the State reported by McGee and Oakland File at 51, we're probably talking about 4 trillion short tons of coals.

Sen. Poland: Thank you very much. Are there further questions from (IA)

: Mr. Shaff, could we determine our known likely oil and gas reserves in this area?

Shaff: The report speaks to that very briefly. In the Beluga, as you know, there is a potential for oil and gas inasmuch as we're dealing with a similar geological formation. We do not have any direct evidence that oil and gas exists. We can speak of the potential.

Sen. Poland: Senator (IA)

: I wasn't quite clear on what you mentioned about the mental health land; are they involved in this to any degree?

Shaff: We have... mental health lands are not involved in the trade. I did mention the mental health lands because we do have a known reserve in the mental health lands at 1.6 billion tons. That is not included in the figure that I gave you for the trade area in the Beluga region.

Smith: Just to summarize that, within the Beluga area, 75% of the known coal reserves remain with the State, approximately 25% of the known coal reserves would be available if selected by Cook Inlet.

Sen. Poland: (IA)

: Seventy-five per cent would remain with the State?

Smith: Would remain with the State, has nothing to do with the trade.

: You said that percentage of the known coal reserves. What percentage of what you're calling the hypothetical coal reserves would remain with the State and, of the reserves in that area, what percentage becomes(IA)?

Shaff: I don't have a hypothetical figure for the coal reserves in the mental health lands before me so I can't quickly calculate the percentage. We could do that when we put up - we have a map. . .

: Do you think it's about that same proportion or is it different?

Shaff: Well, he was speaking about the known.

: I know, but do you think that the hypothetical coal reserves, subject to check of your materials that it would even out backwards - same order of magnitude or proportion to (IA) or substantially different?

Shaff: I think staff is working that out right now.

Doby: It's not an answer exactly but we can work that figure out for you. But if we take the hypothetical coal reserves in the entire Cook Inlet region, the State possesses a very large percentage of reserves. The estimates of reserves underneath the Cook Inlet which may be developed some day through liquification are extremely large - up in the trillions of tons. I think Mr. McGee can bear that out. The potential for the entire State is in excess of 5 trillion and again we could bear that out. The State has a huge coal potential in the hypothetical range and there is a lot of coal in the Cook Inlet region that is not involved in the trade. To answer your question, I think the percentage would probably be (IA).

Sen. Poland: Would you please identify yourself?

Doby: My name is Patrick Doby. I work for this gentleman here.

Smith: Pat is one of the authors of the report in front of you.

: Are you determining that because there no doubt will be people here who will testify that what you're calling hypothetical coal reserves may be a little more than hypothetical so any representations you make as to what proportion you think is in or out of the land that is subject to the trade would be important to both what you're calling hypothetical reserves as it would be for what you're calling proven or known.

Sen. Poland: (IA) Representative Cotten.

Rep. Cotten: Mr. Smith, although probably "threat" wasn't the best word to use in - anytime I hear the subject (IA) about what the Federal Government might do. But it seems that the possiblity of another Frizzel type offer occurring, that the State does nothing. The evidence of that, it seems to me, to be a - threat maybe is a little bit too large a term - but perhaps you might address your attendant to, in the rest of the testimony, go over what the status of such lands like the Swanson oil fields, the Campbell tract, Point Campbell out there - what would be the status of those if the trade doesn't go through?

Smith: First of all, I would like to say that when I alluded before to the term "threat", I was tying it more to the wording that occurred in that particular article which said that no other lands would be transferred to the State, as though they were refusing to transfer our statehood entitlement because of this and that's what I was trying to say - that that is not the case at all. With respect to the point you raise now, taking heed of your term that maybe we shouldn't use the word threat but being in the realm of that ballpark, the U.S. Congress has said that they will seek an equitable solution to the Cook Inlet problem. They are aware of what the Secretary offered to Cook Inlet at one point, the quote 'Frizzel' offer. And this of course is what, last year, approximately a year ago, the Cook Inlet region approached Congress to implement, was that offer. And if Congress does - if the trade does not go through and Congress does decide that they are going to legislate a settlement, it's hard to say - our Congressional delegation which asked the State initially to become involved, is aware, I think, that Congress is serious when they say that. I think our delegation would indicate that they do feel that the settlement might not be at all in the State's best

interest. With respect to the particular aspect that you're talking about now, the Swanson River oil revenues, the park lands out here in the Campbell airstrip area, it's very hard to say. I do feel that the State would put up a tremendous hue and cry concerning the oil revenues in the Swanson River. The question about whether or not the delegations would feel that or whether or not they could hold that line in Congress, that's a discretionary judgement. I should say a subjective judgement on various peoples parts. We do know that it was offered. We do know, since the State gets 90% of those revenues anyway, they're not of particular interest or significance to the Secretary because he doesn't get them one way or the other. With respect to the land within the Anchorage Bowl, Section 22-L of the Claims Act says that in implementing the Claims Act the Sectretary would not be able to allow any native corporation to get title to federal land within two miles of a first class city. Now, in the agreement in front of you, Congress has waived that right. So even though we're talking about what happens if the agreement doesn't go through, Congress has already indicated that it does not feel that that protection, you might say, for municipality is sacrosanct. They have already waived it once. Of the three areas about a third of the Campbell tract is outside that two mile limit as it existed in 1971 anyway. And I believe Pt. Campbell is completely out and I'm pretty sure that the approximately 255 acres of Pt. Woronzof is also out, certainly it is right on the edge. Now again, how Congress will review those, I don't know. They might decide to protect one and allow the other to be part of an agreement. It's very hard to say. I think it is fair to say that Congress did indicate that if the State decided not to participate in the agreement, which they fully realize is within the States' rights, the State has come into this on their own, that Congress has asked that those lands not be transferred, to leave its options open. And again, that could be read on the face for face value for what you think they meant by indicating that. But it is their land over which they do have control.

: (IA) I understood you to say at the previous meeting that the Frizzel offer wasn't withdrawn?

Smith: The Frizzel offer was withdrawn before Cook Inlet did select it, that's true. I just indicate again, it was an offer that we feel on its face was valid at the time.

Sen. Poland: (IA)

: What is the status then right now of, for instance, the Campbell tract? You say that they waived that provision for this agreement but if this agreement doesn't go through, then the Campbell tract really wouldn't be eligible for selection by CIRC.

Smith: If the agreement did not go through, it is my assumption that the Secretary will still be bound by Section 22-L. If Congress decides to legislate some settlement, they can do what they want with that restraint. They can allow it to stand or get rid of it. The Secretary would not be able to go around that constraint however. Although as I say, approximately 1/3 of Campbell airstrip, the Campbell tract itself is outside that two mile limit.

Sen. Poland: Senator Orsini.

Sen. Orsini: Part of the study on the economic end of the study involved the use of probabilities of certain lawsuits either taking place or not taking place. Who estimated the probabilities?

Smith: It's a result of a number of discussions. Again, that is something which you could call subjective on any one individual's part. But when you bat these around, you come out with a figure. I guess I was the person who ultimately nailed down the final probability on it.

Sen. Orsini: (IA) consultation with a number of attorneys who will be familiar with the cases, discuss the matter and in your opinion that the different viewpoints that these were the average or most likely (IA)?

Smith: More or less. For instance, with respect to one as an example, the Cook Inlet appeal in court - some counsel has said that the appeal might probably have a little bit less than fifty. Other people who - not necessarily directly counseled here but who have probably a darn good background of what happened in the State and would be knowledgeable - say that it might be as high as, and might even be 70% for that specific aspect of the analysis. So it's hard to say. I think people could generally say that the appeal Cook Inlet has lodged with the Court of Appeals is certainly stronger than their initial District Court appeal. Most people think that it's got a stronger possiblity than they had on the first go around.

Sen. Poland: (IA)

Smith: Excuse me Madam Chairman, can I - I would like to add to that. As an early part of this negotiation, something which has fallen out now because the time has changed, the State was offering half a township to each of the villages of Salmantof and Alexander Creek if they dropped their appeals to become villages. A lot of people including a number of attorneys felt that the State was out of their mind because there was no way those two villages were going to win their suit. Those two are now villages. They have selected tremendous amounts of land including State mental health land around Salamator. Alexander Creek has selected land that under the terms of this agreement would come to the State, so it came right out of the State part of what we would have gotten from the agreement. And yet a good deal of counsel and expertise said that they would not do it. They are now villages. So my point is, to emphasize that it's a subjective situation.

: You were giving us some figures on royalty, that figured on present royalty?

Shaff: The numbers that I gave you were based upon two assumptions; that they would continue with the present royalty until the year 1991 at 10¢ per ton. After that the study includes three possible royalties anticipating that the State perhaps -I wish to change its royalty policy and a fixed dollar amount per ton, you would fix dollar per (IA) a ton of coal. We used the package three royalties, 1/3 royalty or 33 and a third percent or 1/8 (IA) 1991 to the year 2025 would change the scenario to a royalty fixed on the cost of coal as best we could estimate the cost of coal in 1991. And we used the Bureau of Mines figures for that estimate.

: (IA)

Shaff: Our agreements were, or our discussions and work in the survey started sometime in October. I can't be more specific now on the date than October, 1975.

Sen. Poland: (IA)

: What is this ten cents per ton based on (IA) picked out of the air or based on some rational process or how is it arrived at?

Schaff: The ten cents per ton is the present State policy for the royalty to be received per ton of coal. But where that ten cents came from, I can't answer that question.

: Since time immemorial or is that something more recent or . . .(IA)

Smith: The ten cents per ton figure is a figure which is put into the initial prospecting permit when an applicant asks for a right to go out and explore on State lands. In the cases of most of the major leases in the Beluga area, the value is ten cents a ton. These leases were taken - or this prospecting permits were taken to lease in approximately 1971 in the case of the land trade area; 1972 in the case of other State lands in that area. Which means the prospecting permits themselves were issued say about 1969. At that time, ten cents a ton was a figure that was arrived at within the leasing section of the Division of Lands as an appropriate return to the State. Right now, current prospecting permits, as an example, carry a value of thirty cents per ton. In both cases these are fixed values and one of the results of the report in front of you, one of the recommendations is that setting a fixed value for a period of twenty years is the case, is probably not the best idea particularly in a time of inflation as we're faced with now. I think, as a result of this we can look to a change in this in the future. Because as was queried a moment ago concerning what happens to our economic analysis after 1991 - we hypothesize in the analysis that we would go to a percentage royalty basis, a percent of the actual coal and that would be a much better return, probably, to the State as a royalty on simply because as the price of coals goes up the State would rise with it. We would take a bit more of the risk but we would share in those profits. I might add with respect to that assumption in here, that assumption increases tremendously with some dubious legal status the totals that the State would be trading away in this case. In other words, we have no reason to believe that the leasee would actually allow the State to change to this more favorable status at that time. They have a lease which says that certain cents per ton and they would probably argue very strongly to keep it. So another reason why this assumption is a very liberal assumption for coming up with totals of the value of that royalty to the State, in this case ....

: (IA) leases of this whole area is involved in (IA) What do you think is implied (IA)

Smith: Under the terms of the lease, as they stand now, they can be renegotiated, or not renegotiated. They will be reappraised after a period of twenty years which would be 1991 in the leases involved here. The lease itself would extend as long as the person pays their lease fees and essentially maintains within the framework of requirements.

: What happens to the Cook Inlet Regional Corporation when they take over this land, they take over the leases too (IA) then they will get to use (IA) ten cents a ton or what happens (IA)?

Smith: If the trade was consumated, Cook Inlet would receive title to the surface and subsurface resources in the area and that would include administration of the lease. They would be bound by the terms and conditions of the lease. If any coals were mined before 1991, Cook Inlet would receive the ten cents a ton. If any coal was mined after that, that would be on the basis of whatever the reappraised value would be under the reappraisal clause.

: (IA) exact definition to the State (IA)

Smith: That's true. As Senator Rodey observed on Wednesday, in a way the State is giving away what we now look at as kind of some poor bargaining in the past as far as fixed royalty rate perhaps or just giving this on to Cook Inlet and they are going to have to worry about the problems that they would have there. We're still going to have the same problems on the three quarters that we retain now.

: Has your department projected the earliest possible development date for the reserves that exist there (IA)

Shaff: Yes. (IA) report we've made some assumptions as to when production might begin and make preparations. (IA) If I can find (IA) I could tell you. We took three scenarios for that (IA) and the most optimistic would be that in 1981 production would start in the trade area of the Beluga (IA) at one million tons per year. And the most pessimistic would be that no production would start until 1990 at half a million short tons per year. The rates of production were geared to accumulative production at the end of fifty years of a hundred and fifty million tons in the pessimistic case and 891 million accumulative production in the optimistic case presuming a production of 21 million tons per year - shows that twentyone million tons per year as it was cited in a report by Stanford Research Institute. However, production rate of 21 million tons per year is almost three times the annual production rate of the largest coal producer in the United States. The (IA) Mine produces about 7.4 million to s. So our optimistic rate of production is about three times as optimistic (IA, is not.

: What sort of date would be necessary for full production by 1981?

Shaff: I'm sorry, I don't understand the question?

: If we're going to have coal produced by 1981, then we're going to have to start at...

Shaff: I would assume that they would start with their planning now.

: Now?

Shaff: Now.

: Next week? Last week?

Shaff: Right. Our optimistic is that it would take approximately 6 years, or 5

years to get coal producers...

Smith: I would like to add...

Shaff: These are somewhat arbitrary figures, difficult to (IA) available, etc.

Smith: I would like to add something to that briefly. Two points; one, in the optimistic case we also assume that there are approximately 400 million more tons of coal over there than we know today. We are not quite doubling, but I think it's an increase from 570 to 891 of over 400. It must be about 80% more over there than we actually know under that scenerio. Again, another tremendous assumption, which is just that, very optimistic. But, I would like to indicate that this also, the whole report, makes the assumption that the Capps Glacier area, the know coal reserves that would be transferred under the proposal, would be developed first. I think that most people would agree that that will not be the case. The 3/4ths of the known resources that are within the mental health lands that would stay with the State, will most probably be developed first. It's interesting that the same company that holds the Capps lease also holds a major portion of the coal reserves that will remain on State land and one of their early and most prominant concerns in talking with the State on this, was that they might have to develop the Capps Glacier before the other, the Chuitna field, that would stay with the State, because they are looking at developing the Chuitna fields first and, therefore, every year that development of the Capps Glacier is put off, the present, lost value to the State under the terms of the trade, of course, decreases.

: I understand half (IA) coal (IA) the hypothetical problems that are coming up. You're estimating up to 80% of how much coal is there (IA) 25 million to 42 million. The spread is fantastic (IA).

Smith: Well, that's one of the risks they're taking. They personally are not, I don't believe, looking at that as the crown jewels in the trade at all.

: We have a right to look with suspicion when you're talking about those (IA) involved in this decision here. (IA) hard money figures that are given to us about what values are represented (IA) in this trade. We simply don't know.

Smith: That's a very good theme, I think, that's running through it and what we're trying to present in here are the best ideas on the various scenarios by State experts. Cook Inlet, I believe, values the lands even lower than the State does from the standpoint of the mineral rights.

: One more thing, has anybody from our State people (IA) federal people (IA) looked at this with a better eye than the State has?

Smith: There are other people that have looked at it. I'm sure that they will be before you before the end of your meeting here. As to whether they've looked at it with better eyes than the State, I would withhold that. I would be biased on that question. I think, I can say that nobody has looked specifically at this area particularly recently in trying to analyze the aspects of the trade. But what you have are, as I say from the standpoint of the State's experts, is the best information we can come up with.

: (IA) optimistic assumption for production in 1981. What did you assume to be the use of the coal there (IA) typical or what? (IA)

: (IA) for export not power generation (IA)

: Japanese export or what?

: Probably.

: (IA)

: You have to make an assumption that there's a market for it (IA) what the assumption was.

Doby: (IA) the assumptions actually made were a pessimistic assumption that the coal would not be exported - that was the pessimistic. The first thing that was assumed, that the real pessimistic is zero production, nothing ever happens, which is possible. A catastrophe could arise that we would have no production. We said, or I said, that the pessimistic assusmption, and this has been realized by some other people at least in your minds, that the coal would be produced for internal use primarily for electric generation and this type of thing and that's the low end.
Then taking the optimistic, this is the second optimistic, I have a previous calculation that's about half of this much and I talked to a number of people and the technique was to call mines and a number of people and say, 'how quick can you actually come to production?' I keep asking people. And then, 'what do you think the market will be?' and that's a big question. The assumption here is that somebody can absorb 21 million tons a year of our coal which is a tremendous amount of coal. And that's why it's extremely optimistic - if it has to be exported, most likely Japan and the western United States, and that's assuming the western United States isn't going to go ahead and do what they're trying to do and that's produce a lot of coal. So, I think I mentioned in the report that it's very optimistic - it's just about as far out as we can possibly get and the reason for that is that this is probably the best discounted income we could expect to get for the State. I used a 1/6 royalty. I just negotiated what I thought was the best deal we could possibly make and produce a heck of a lot of coal for the whole world as fast as I could do it and that's about what it is. You come down from that a heck of a lot but those numbers, from the people I talked to and it's just plain reason or as much money as they could see (IA)

(IA)

Doby: Thank you.

Sen. Poland: Senator (IA)

: It's my understanding the legislation pending before Congress embodied the transfer of Swanson River fields as well as Anchorage (IA) lands to Cook Inlet (IA). Is that correct?

Smith: If you're talking about the legislation that was proposed to talk about last spring, in other words the old Frizzel offer which was there - that did

include all the things, whether it's pending before Congress, I would say that that's back burner now since we've all come up with a proposal as something that we all felt we could live with. I don't know if it is in Congress, exactly where it is. I would assume it would still be in sub-committee, probably House sub-committee.

: Both houses by Congressman Meeds and Senator Jackson respectively. And sponsored in...

: Certainly in the House by Congressman Meeds. I cannot say for sure in the Senate who it was. Cook Inlet Region might be able to help you with that question.

: It's also my understanding that gentlemen in the various houses have recourse to input (IA) legislature and have they (IA) to push the legislation through and some reasonable settlement of (IA) might be (IA)

Smith: I think that's a pretty set conclusion. Congressman Meeds felt he wanted a 13th regional corporation over some considerable opposition from both the natives of Alaska and others and he got a 13th regional corporation. Senator Jackson, I don't feel I have to say about his power in the Senate.

: (IA) capable that the State must do something to negotiate a settlement that will prevent the transfer of the Swanson River fields which brings (IA) revenue to the State, (IA) Anchorage (IA) prevent (IA) I don't know whether it raised the proper word uses (IA) Point out it seems that they have a considerable hold on much of our natural resources and something has to be done even discounting the possibility of (IA)

Smith: Again I, that's what I meant when I alluded at the outset to the alternatives we're faced with and I concur again. It's hard to say that Congress, in fact, if someone were to ask me, I would say that Congress would probably not pass the Frizzel offer as such because it would impact the State and I'm sure that the Congressional delegation would be out there running interference but they can just throw so many blocks and my point is, I think we could safely say that there would definitely be some aspects of any settlement which would not be in the State's interests. You mentioned a couple of them that the State might protect but they can't protect all of them is what I'm saying.

(IA)

Sen. Poland: Senator (I?)

: Most of what you've talked about so far in regard to the Cook Inlet lands that are proposed to be traded under this three-way trade to the Cook Inlet Regional Corporation, what about the other lands that the State would be getting in exchange - what do you have to say about those? I know that they're not only mentioned in the material (IA) reports but if you're going to give a capsule summary of one part of it, you should give a capsule summary of the other part.

Shaff: I can't. I would have to walk through the report and respond in terms of each area we're talking about and give you a (IA) areas of the State.

: We're talking in terms of value in dollars for various purposes - what kind of comments in regard to the (IA) you might (IA)

Shaff: Very few because in those areas we're talking mainly about resource potential rather than resource value. And in the case of the Beluga fields we have known coals and in certain other areas, for instance the Matanusak and so forth, some known coals, so we can speak a little more specifically. In terms of some of the other areas of the State will receive, we're in geological no-man's land essentially (IA) in regard to certain types (IA) problems (IA) proper subject. So that, there is not too much I can say about those lands.

Smith: I think one of the reasons on that is that, with respect to the Beluga area, we're talking about coal which is found usually in, if it's of importance at all, in some type of thick beds in one area and because of the nature of our leasing requirements, before they are leased, we have a good handle on what's there. Secondly, the State does get royalty from coal. If we were able, in some way, to have the prescience to know exactly what minerals were on the land the State was getting, we could put a dollar value on their value. The State gets nothing. We have no royalty, we have no severance tax on those minerals right now so even if we knew what was there, as far as the value, it's kind of unfair because we do not have a royalty or a severance on those minerals where we do on the situation with coal.

Sen. Poland: (IA)

Smith: Well, this was all we had in the way of prepared text because of the reques by the Committee that we limit our initial presentation to within half an hour subject from then on afterwards to questioning. We have other members available here pursuant to your request as Mr. Shaff indicated, members of the Geological survey staff and if you have any particular questions to ask, I would feel that as you feel it appropriate to ask, we could then refer the questions to the proper individuals.

: (IA) economics value tables, as I recall (IA) two rates of discount (IA)

Smith: That's correct

: Which of those (IA)?

Smith: I believe it's the 8%.

(IA)

: This is the December 6th memorandum?

Smith: Yes, my December 6th memorandum is based upon the 8% summary that's in this book which, of course, is less favorable to the State than the 10% discount and we ran into discount rates because some people discount higher than others. Industry generally discounts at a higher rate. We felt that 8% was more realistic with respect to what the State returns as an investment on. I should say gets as interest on its investments within the general fund.

(IA)

Smith: I'm not sure but it was certainly an in-the-ball-park figure that we felt more comfortable with than the 10%.

(IA)

Doby: It was the 8%, Mike and I have discussed this. In most cases we kept trying to favor value of the resource and this is a standard economic cash flow calculation and we kept trying to push the numbers - or I did - to look at the most optimistic return to the State because when you're looking at the 8 - so we used the 8% as being a pretty optimistic cash flow and 10% is probably a little bit high with respect to the way we discount or sometimes, with respect, with a State project I would like to discount at 10% - I would like to think we could do that well and I wish we could.

: What about (IA)?

Doby: Well, I'm not an economist and I couldn't tell you that. Probably more than 10%, I'm sure.

(IA)

Doby: I wouldn't know. Sorry, But I'll find out for you.

(IA)

Smith: I would like to interject here that that figure of 8%, as far as a discount rate, it's in the ball park but I think that we may have missed the point if we try to put it against what we're getting within our investment funds where the State has had its general fund monies, and one of the reasons being that a state operates not like a giant corporation. We, whatever we got for this, if somebody was paying us money based upon these, for those lands, or whatever, the State would probably not be putting it into an investment trust fund. The State has other requirements and duties to its citizens of railroads, schools, hospitals, what have you, so that is a return; the capacity of doing something now with that money, not necessarily just whipping it into a bank. But you have to refer that probably to Commissioner Warwick to get an idea what - I should say Commissioner Gallagher - to find out what we're receiving from investments.

(IA)

Rep. Brown: Thank you Madam Chairman. I was not able to attend the Senate Resources Committee hearing again in Juneau on some of this (IA) having (IA) issues (IA) I think still are (IA) but I'm a little perplexed about what exactly really is the Administration's position. Is the Administration's position right now that they are strongly urging us to approve or bless or whatever this particular land trade or are they saying that the Administration wishes not to take a position and wants the Legislature to decide one way or the other?

Smith: I think we can fairly safely say the Administration is definitely behind this bill. We have been in the process of negotiations for going on, or in excess

of, nine months right now and until about three days ago, as Senator Poland mentioned earlier, we had indicated that the Governor was going to consummate the trade and bind the State to the agreement on March 12, and let the Legislature indicate an action definitely one way or the other. That does not at all diminish the Administration's intent on fulfilling the terms of the agreement which we inititaled with the other two parties involved and the only reason we will not do it is if the Legislature votes it down since the only other alternative would be that they would confirm the trade.

Rep. Brown: You know, you really do change the ball game an awful lot when on Tuesday one week you're saying you're going to do what you're going to do unless the Legislature says no and now you're saying you're not going to do what you're going to do unless the Legislature says yes. There's alot of difference between sitting in the Legislature and doing absolutely nothing and passing a bill or a resolution and it seems to me, at least based upon press releases from the Governor's office and reports in the press the last two or three days, there has been a change in position and that now the Governor wants to be almost for something and if any decision is made, it has to be made by the Legislature and if there's anything wrong with the decision, even though it was all generated by the Administration, the Legislature is given a deadline of about three weeks, it's all the fault of the Legislature in the event there is a mistake.

Smith: No. On the contrary. I don't agree with that, Representative Brown.

Rep. Brown: It sure sounded like what the press release said.

Smith: Well, I'm sorry. Press releases aren't always the best method of getting information and I believe that that was the interpretation by the Associated Press which removes it once again from the horse's mouth. I think what is the main point which the Governor has said is that because of the on-going tracking we have done on this, on a legal basis, and because of the amount of effort involved and because of the very large significance of the trade, that we don't want to be in a position of having a trade occur after the Legislature has spent a large amount of time looking at the trade even should they decide under the first scenario not to do anything. We do not want to consummate it with it still what might be a legal could as to whether or not the authority existed. This, as you realize, is one of the reasons why the Governor indicated in the first place that he wished the Legislature to take a look at it indicating that we feel the authority is there.

Rep. Brown: In the first place, my understanding is that the Administration didn't intend the Legislature to take a look at it at all. As a matter of fact, in Legislative Council we were constantly in the situation that we thought we were going to be presented with fait accompli that had already been completely finished before we even began the Legislative session and it seems to me that now, at least the part that was supposed to be direct quotes from the Governor as opposed to a press release or a re-recording by John Greely, who is a relatively competent reporter, is that even in the direct quotes, the Governor was saying that 'I want you to give me the authority that my legal advisors have told me I don't need.'

Smith: To try to sum it up without getting into a political argument, I think the Governor has said, as he did three days ago, that we wish the Legislature to look

at the land trade and the values that it holds for the State, weigh that, look at the alternatives, and to vote up or down concerning it. And that if the Legislature votes up on it, that we are going to feel much more comfortable in consummating the trade with the other two parties than we would have, had the Legislature looked at it and just done nothing. And that, I think, was the purpose in the change of course.

Sen. Poland: (IA) Representative Brown and Mr. Smith, as you know when the Select Committee went to Juneau there was no indication that the Legislature would have any part of the action and we insisted on it and I was very happy that the Governor took the attitude that if he were in the Legislature, he would feel the same way about it. But he has switched horses in mid-stream here and left us in the position of, we must either take a positive action or fail. The other alternative, if we didn't do anything, it was going to go through so you can see where it does give us cause to take an extra look at this. I notice that, I believe it was Mr. Doby who said that he was figuring exports as a market for this coal. Now I realize that your department probably does not have a bunch of economists on hand to give us all the various types of figures but I can't help but wonder if you have taken into consideration if these were converted or used for other performance of (IA), if there were worries to get it out if we, a figure based on the oil equivalent by conversion, has there been any thought to any of this?

Smith: I'll defer those points to Mr. Doby. I will say that the array of possibilities of course, is quite large. It does not matter, under the terms of the scenarios, really what the use is if the use is there. If somebody's going to slurry it out and take it somewhere, if they're taking out 21 million tons a year, it's irrelevant as to what they're using it for as long as they're taking it out in the quantities and under the time tables shown in the chart here.

Sen. Poland: Well, for the next 20 - or since the 1971 leases, but after that there would certainly be a drastic change, wouldn't there - when they start renegotiating?

Doby: The optimistic scenario is the 21 million tons a year - was taken from the Stanford Research Institute study which assumes that the coals would be run through - they have two different studies, but that some type of electric or slurry process would be used. That high scenario, more or less, that could be in there. The market for that amount of barrel oil equivalent within our next period of time is probably not too good in the State because of our own indigenous oil and gas reserves and this type of thing. By assuming an export, it means that really there is a market for it and most people assume that we're an energy exporting State - that most of our energy is going to be exported. But really the use of coal probably will be barrel oil equivalent to some type of a slurry. A lot of people feel that's the way the coal will go out and we have within your report (IA) that we've handed out, we have the Stanford Research Institute report which discusses this type of conversion (IA)

Sen. Poland: We had requested that Mr. Cleveland Conwell of Fairbanks (IA)

Smith: Mr. Conwell is here if you have any questions for him.

Sen. Poland: I would like to have him, I know he's involved in a coal seminar that was held in Fairbanks this year and since this subject is directly involved in the trade lands, I would like to hear from Mr. Conwell.

Conwell: Can everybody hear me? I certainly will be glad to answer any questions. My name is Cleveland Conwell and I'm a State mining engineer.

Sen. Poland: Mr. Conwell, have you ever been asked to give an appraisal of the land involved in the trade?

Conwell: I was asked twice. Once about the 8th of October when I was with Mr. Smith and he asked me if there were substantial coal reserves in the area (IA) said here were and then again on the 31st of January I was asked to make a very quick appraisal of the (IA) valley appraisal that had been made for the Beluga fields.

Sen. Poland: Did the figures that you came up with agree basically with the figures in the report that has been presented to this Committee?

Conwell: I have some very defininte opinions of the report that was given. As far as mathematics, I'd say yes, I think they're correct. But there are other...

Sen. Poland: As far as reserves, what do you think?

Conwell: Well, I think it's a little bit misleading, yes. The report, to me, if I was reading it without the knowledge that perhaps I have of it, I would interpret the 10 cents per ton royalty as applying to the trade area. Actually we're talking about 10 cents per ton royalty on one specific lease that was granted in 1971 and that is only on 7,000 acres and that specifically says the approximately 550 million tons of proven reserve coal which was drilled and outlined by Amex Plastic Development Company. Of course, they are now working down in the Chalitna area. And, as Mr. Smith has already point out to you, in more recent times the royalty has been raised - I think he mentioned 30 cents a ton on any permits we would be doing and certainly we have the perogative, the Director of the Division of Lands, to increase that royalty.

Sen. Poland: Representative Brown.

Rep. Brown: What range of royalty is, what is the widest range from lowest to highest figure that's common or familiar to those people who know the coal business in the United States. I mean, is 10 cents nominal, is it kind of like a magic figure like that 12 and 1/2 over any royalty overtures over oil or is it low...?

Conwell: It's a low historic figure that was used, say, prior to 1969.

Rep. Brown: What other kinds of figures are used by the public, private landowners outside for royalty...?

Conwell: The state of Montana recently has raised their royalty to, I understand, 33%.

Rep. Brown: 33%?

Conwell: 33%. And that's your range. I mean, you were asking for a range (IA)

Rep. Brown: That's quite a wide range?

Conwell: It's quite a wide range.

Sen. Poland: Representative Beirne.

Rep. Beirne: Mr. Conwell, in your estimation what is the (IA) what time frame?

Conwell: Well, I don't think the time frame is so bad in this. Of course, Amex is working on it and they're spending a great deal of money but I think you have to sort of look at the political climate before development actually proceeds. Be sure who you're dealing with and then even if all those were settled, the time frame of actually getting the equipment on the ground, I don't think we would actually have a large scale mining - and I'm talking about 10 million tons or greater - in less than probably 6 years - I don't think we could do that. And I would say that 6 to 10 year time limit for a major operation is realistic.

Sen. Poland: Representative (IA)

: What would you think that climate was (IA)?

Conwell: Well, prime market today, I think, would be for export. I think the markets are there. Well, I know of two markets in the Pacific Northwest that each supply 4 million tons per year now. There certainly is Japanese, have been looking for from 2 to 4 million ton a year markets. And certainly if you go to the coal conversion which is the Stanford Research, you're looking at 100 thousand barrels of oil per day and certainly that will be absorbed into the market with no problem.

Sen. Poland: Representative (IA).

: (IA) expiration? (IA)

Sen. Poland: Mr. Hackett, were you included when (IA) report that was prepared (IA)

Hackett: No ma'am.

(IA)

Hackett: Steve Hackett, exploration geophysicist for the Division of (IA) project for geophysical survey.

Sen. Poland: Are you, you're familiar with the figures that have been given here, do you basically agree with them, with the research that you've done in this field?

Hackett: The area, in a recent geophysical survey, indicates that the Beluga Basin area's quite a bit more complex than had been assumed previously. There is substantial evidence that indicates that here is quite a bit of tertiary sediment in the Beluga Basin north of the Casa mountain fault.

Sen. Poland: What does that mean?

Fishburger: Are you trying to tell me that there's a bunch of dirt that you hadn't planned on finding on top or coal that you thought you might take out sometime? You've got more problems than you thought you had?

Hackett: Right. I don't want to get into a technical discussion but kind of a summary is that the gravity and magnetics in the area indicate that there could be a substantial tertiary sediment which encloses the coal and possibly oil and gas resources within the area of discussion, the trade discussion.

Fishburger: I assume then that the natural question to follow that, is that the six year plan for (IA) production is possibly higher?

Hackett: That's completely out of my specialty, of my realm. I couldn't answer that.

Sen. Poland: Representative Brown.

Rep. Brown: Madam Chairman, following up on Mr. Fishburger's question, at least your statement that you've just given us right now, as far as you know, was not taking into account, or doesn't seem to be taking into account in the estimate study we're talking about here...

Hackett: I believe that this report refers specifically to a coal evaluation and it does mention oil and gas potential but the survery, as such, just used known geologic evidence. The areas that I work in are more in direct evidence of structure and basins and mineral accumulation and it's not, it's kind of an ambiguous science is what I'm trying to say and I don't know why it was not considered in the economic evaluation of the Beluga Basin. Other than that, I can't answer your question.

: I'd like to ask a question, if I could, of perhaps Mr. Hackett. Are you saying that the comment you just made in some way affects the known recoverable resources over there - that we know about.?

Hackett: Right. I think that there's quite a bit of evidence to indicate that there is oil and gas potential in Beluga Basin area that has not been previously considered.

: That wasn't my question. Is what you're talking about affecting the 570 million figure that this report speaks of, of tons of known coals?

Hackett: Yes, it could.

: You mean, it could reduce it?

Hackett: It could make it greater. The basin outline in actual potential or possible thickness for Kenai coal group could be alot more than had previously been recognized.

: I don't seem to be able to get my question across. This is based on known coal. We're not talking about what may be out there; we're talking about what is

there today. Is what you're saying, if we only know that here's so much now, and you're hypothesizing there may be more, it does not mean that what we have put out here today is not correct as far as it goes.

Hackett: Correct...as far as the coal resources.

: Okay. That, I think, was important because that is not what I understood Representative Brown to ask.

Shaff: Could I attempt to clarify a little. I think what we're stumbling over a little bit is a matter of scale. We're talking about the Cook Inlet Basin that has been fairly well defined by aeromatics and gravity studies as well as several wells. Steve's work dealing primarily with aeromatic data and gravity data has recently indicated that the Beluga Basin seems to be of larger magnitude in terms of depth and Steve might want to predict that depth from these studies and this report of his in press and he has reported to the Society of Experimental Geophysicists this past fall. We're really talking about a bigger basin. Now, how does it affect the hypothetical reserves? Don correct me if I say this incorrectly, but hypothetical reserves are based at times on a depth of 2500 feet and at other times on doubling that figure. So, in a sense it does mean in terms of the coals, that here may be more coal in the Beluga Basin simply because the basin's bigger than we thought it was. But in terms of the hypothetical reserves and our estimation, it may not have that much effect. So, it's sort of a yes and no answer but it's really a matter of scale, I think, that we're talking about.

Sen. Poland: Representative Smith.

Rep. Smith: I'm having trouble following this tale. Sometimes we're talking about the Beluga Basin and sometimes the Kenai Basin and (IA) differentiate that from (IA) specifically the area he's talking about. (IA)

Shaff: We came loaded with maps.

(IA)

Hackett: The area in question outlines, first of all, the Beluga Basin is on the west side of Cook Inlet, water bound by the (IA) faults cuts across the west side of Cook Inlet and around by Mt. Susitna here, Mt. Beluga, and Mt. (IA) here and (IA) Basin bound by faults and the black dot here represents (IA) myself with a survey a couple of summers ago and (IA) help outline the basin. The trade lands per se that we were talking about are right here in Beluga Lake and what is indicated from summary survey is that it was previously believed that the basin north, northwest of the Beluga (IA) fault was quite shallow, in other words, less than 2000 feet of tertiary sediment and both gravity and magnetic data indicate that there is a 6th section involved possibly up to 7500 feet of tertiary sediment sitting over (IA) right through here and Lake Beluga and in summary to just indicate the technology previously suspected and there is a lot of various potential, I think, just a larger basin than previously recognized. Does that help answer or clarify in very generalized terms.

: What does (IA) on the map?

Hackett: Kenai (IA) Anchorage is right here Bar Island, (IA) Island, this area right here, Beluga Basin is about 600 square miles, it covers about 600 square miles of the tertiary basin per se.

: Where's (IA) go on that map?

Hackett: It's right here.

: You said that an area (IA) in the middle of that is one of the areas that is the subject of the trade that is proposed, is that right?

Hackett: (IA) trade is sitting in the middle of the basin.

: I'm trying to spin my head back and forth and look here and there and back again.

Hackett: This yellow outline here is outlined on this gravity (IA). Recent production, oil and gas production, is associated right here (IA) bay. Right in here, Cook Inlet Basin is defined by this gravity low right here.

: If (IA) basin is larger than you thought it was, how does that, only a portion of the basin apparently is involved in the proposed trade...to what extent does that change the assumptions that have been used by those who have looked at the trade lands and estimated their value?

: On that question, I think the analysis of the coal subject based on the upper 2000 feet of sediment, in other words, that was considered to be economically feasible to mine. The point being that (IA) there is also oil and gas potential in the area nd also the basin covers a larger area (IA) than previously considered.

: You mean within the trade area, is that right?

: The trade area is still the same (IA) I don't believe I can answer your question.

Smith: Mr. Chairman, I believe that Mr. Doby would like to add a comment.

Doby: Let me put on a couple of different hats. This is my geophysicist hat. I am a geophysicist by trade so I understand a little bit about gravity and then I'll also put on my chief petroleum geologist's hat. But first I'll put the geophysicist hat on. I've got a coal hat sticking out here too so if I get confused, you'll know what's going on. I just talked to Mr. McGee and within the value of the coal in the geographic area of the trade, there's different assumptions, but with the economics we're looking at, we're assuming about 500 feet for strip mining and we're looking at strip mining, really, for economic reasons for this quantity of coal, producing this coal within 500 feet and certainly the deepest is 2000. Now, the gravity can tell you the thickness of a particular section of rock and we're talking about sedimentary rock of tertiary age, which is young, and what we find in the coal in here. Now, Mr. McGee had a report of '74 which calculated that coal underneath the water of Cook Inlet, we had 15 or 20,000 feet of the same kind of rock and we had trillions of tons of coal in it. But with respect to this particular trade, the actual thickness, whatever gravity, the variation of thickness

in terms of the trade doesn't really have a bearing because we're only mining the upper, economically feasible part of it - that's the coal. To answer your question, except for the edges, (IA) 50 foot on the edge, we don't know, but I mean, except for the edges as the basin increases, it shouldn't have much bearing if we add another 5000 foot because the calculations then, within this period of time, 50 years, we can only mine so much coal at a strip mining rate as fast as we can get it out if the market will take it. Now, the oil and gas, I have nothing - anybody can take their best guess at the value of the oil and gas there. It's been there a long time - there's quite a bit of information (IA) from whatever else, I can't answer that. Generally, I can say is, again as a chief petroleum geologist, the relative value of that land - it hasn't been exactly very high in the past. I mean, there could be oil any where out there but we simply haven't seen much activity, much discoveries, much luck and data doesn't indicate that it's what we would call high potential petroleum land and has not been rated as such by ourselves.

(IA)

: Question for Mr. (IA)

Sen. Poland: Representative Rhode.

Rep. Rhode: In other words, if you've got, let's say the coal ceiling was 10,000 feet deep, it doesn't mean anything, say, below 2500 anyway (IA) we mine it.

Doby: Pretty much in the future. The problem is we're looking at here, primarily at this time, strip mining, scraping it off to get to it, because we've got to have high volume production to equate the transportation costs and the costs of mining it here and with that type of production, of course, the deeper you get, the higher your costs and frankly, most people I've, at least according to Mr. McGee, you're looking at 500 feet for the economic projections we have. We're looking at economically mining the shallower coals now. Sometime far off in the future it's possible that deeper coals might become economic someday but it's always tough up here to think about, of that potential (IA)

Rep. Rhode: One more question: coming back to this ten cents a ton oil lease, then, the determination of the ten cents could easily be based on the, say, the feasibility of getting the coal out, would it not be that near salt water were easy to mine, the royalty would be, say, ten cents or way up in, say, the coal country or something (IA) it really wouldn't be worth anything, would it?

Doby: That's true. Actually, the paragraph in the report, the whole principle of assigning a constant monetary value for a royalty, like 10 cents, just is not done anymore because of inflation. We're living in an inflationary world and I discount that 10 cents, that dime, at the end of ten years is worth a penny or two and the rate royalty, a percentage royalty like we have on oil and gas of 12 1/2%, but this you take a little bit of money and you pay a little bit of money and that's...the ten cents a ton is just, I said it in there, is just not very darn good, it just stinks, to be quite frank. And I hope that we don't use that type of approach anymore.

Sen. Poland: Representative (IA)

: Who did you say you work for again?

Hackett: I work for the Geological/Geophysical Survey.

: That's the State?

Hackett: Right. It's part of Natural Resources.

: Do you agree with Mr. Doby's assessment of the possible future production of oil and gas in the specified area there?

Hackett (IA) previously, these statements right here other than all the wells, all the deep wells that are around the (IA) Lake faults or (IA) in that area so the only deep control we have in Cook Inlet Basin is out of Beluga, the basin per se. These new gravity stations here, (IA) this helps to find the gravity field in the area and very strong (IA) this area has been overlooked by companies and by the State as possible petroleum (IA).

: So you disagree then?

Hackett: Right. I think that the reason why there hasn't been any interest here before, we had no data to, or (IA) of the area other than the activity down where Paul Gaston was.

: You just did this, these gravity studies and so forth last summer?

Hackett: Summer before last. The project (IA). So, I don't disagree with Pat's conclusions there, other than this evidence indicated that there is additional possibilities that have never been recognized before (IA)

: You completed your analysis much more recently than the time that you did the survey (IA)

Hackett: No, this analysis has been in preliminary form but, to my knowledge, it was in our division since last year. I gave a talk in Denver in October summarizing the study (IA) exploration (IA)

: Mr. Hackett, do you have anyway of determining the potential for oil and gas?

Hackett: The only way that this type of data can be expanded (IA) drilling and the same thing with any other speculations, coal (IA), the only way that we can really get a grip on any analysis of the Beluga land trade is to actually get in there and (IA) what's there. A lot of the tools that we use for surface geology and a lot of geophysical/physical properties to project what's there, the only reality we could (IA) from drilling.

: Thank you very much.

Sen. Poland: Excuse me, Representative Smith had another question.

Rep. Smith: For Mike Smith. Mike, do you know offhand if any of this land is under oil and gas lease at present?

Smith: I'd have to defer that. I believe my mineral leasing officer, Detro Denton, is here at the moment. I believe that most of the area of interest is, as was just indicated, much more coastally oriented in the areas where we have the two known existing fields, the Nicholia and the Beluga gas field, but I'll have to check.

Sen. Poland: (IA) anyway, would you come forward please? Representative Smith had a question here?

Rep. Smith: Is this area under oil and gas lease now?

(IA)

Denton: I'm Detro Denton with the State Division of Lands. I'm not sure. I believe that a part of it is. I expect some mixed status. We've had a lot of leases terminate in that area recently. Expiring or terminating. I haven't looked at it with that in mind so I can't be sure.

Sen. Poland: Mr. Denton. were you involved in the firming up of the, I realize you're not involved in the policies, but were you brought into the discussions on this land trade?

Denton: In a very limited way.

Sen. Poland: Were you in from the beginning?

Denton: The first contact I had with, was at about the time the proposal was made public, a few weeks before that.

Sen. Poland: Do you see any problem in the difference of management between the State or private ownership?

Denton: You mean as far as the development of the resource goes?

Sen. Poland: Yes sir.

Denton: Yes. It's always easier and better if you have the land under one management.

Sen. Poland: And part of these leases would be under the State, those that are not involved in the land trade, and the other part would be under a private corporation with the set-up that we have right now if this trade were consummated.

Denton: Yes ma'am.

Sen. Poland: Are there any further questions? Representative Beirne?

Rep. Beirne: You mentioned that several of the leases were terminated. Is there - part of the termination is because they realize that (IA) region potential is not there and would feel at this time, this is a second question, we know more or less about potential leases than at the time those leases were (IA)?

Denton: Now we're speaking of the oil and gas leases terminating?

Rep. Beirne: Right.

Denton: I would say we know more but leases terminate under a variety of circumstances; one is that they abandon them, another is that their time runs out and they haven't got everything put together to spend the money to explore them, and it's a common practice in the areas that are being explored in the State now, this is something that happens all the time, is re-leased and re-leased and...

Rep. Beirne: (IA) they are (IA) to re-lease them, that's correct? (IA)

Denton: Yes ma'am.

Sen. Poland: Representative Rhode?

Rep. Rhode: That was my question, thank you.

Sen. Poland: Thank you, Mr. Denton. I would also like to hear from Mr. McGee who was, as I understand, was one of the authors of the book.

McGee: My name is Don McGee. I'm a member of the State Division of Geological/Geophysical Survey. Mr. Ross is my boss here.

Sen. Poland: You were, as I understand it, Mr. McGee, also working on the report that was prepared and presented to the Legislators with regards to the reserve?

McGee: Yes ma'am.

Sen. Poland: Were you involved in the negotiating, not the policy, but again, the preparation for the negotiations of the land trade?

McGee: Yes.

Sen. Poland: Early on or...?

McGee: In October, just before the announcement to the public in the newspapers.

Sen. Poland: And you, I take it, agree with the figures that are in the book - do you feel that they are a complete picture, that we're in a position to make profit judgements is this one of the things (IA)?

McGee: Yes. I think the figures are probably as accurate as we can make them (IA). Again, I want to emphasize that when we talk about known coals, we're talking about coal that has a high probability of being there. Hypothetical coals may have a plus or minus value maybe as much as 50 or even 75% - the best guess we have based on our present knowledge.

Sen. Poland: Representative Smith.

Rep. Smith: I have a problem with this scale still, Don. When we talk about the known reserve, I assume they're in the area that's pretty well defined here. Does that same hold true for hypothetical reserves, that when you find a hypothetical value, do you look at a whole valley or...?

McGee: No sir. The hypothetical value, as we mentioned here, are those values

within that area.

Rep. Smith: Roughly within the area outlined by yellow here or...?

McGee: Yes, within the area we're talking about, the land trade area. If we go outside the area, we get much larger hypothetical reserves, much more area's involved.

Sen. Poland: Are there any further questions? Mr. Smith?

Smith: I have a question, I might, or a couple, I might ask Mr. McGee while he's here to bring out for the Committee, particularly as alluded to earlier by Mr. Shaff on some of the reports we've seen floating around in the papers concerning the various amounts of coal to be found and Mr. McGee, I know, is aware of some of these and I would like to ask, without getting into specifics, but do you feel that, your estimates as published in this report here, that, say, some of the amounts of coal and tonnages that have been quoted in the newpapers, do you feel that these have reasonable bases on which to use estimates following the work that you've done, this type of work in that area?

McGee: This is terminology. In the paper, the tonnages mentioned were mentioned as recoverable coal; I don't know what the word recoverable means. To me, it means what I would call known coals, coals we can extract within a reasonable economic picture. Hypothetical coals may, at some time in the future, become known coals for reason of drilling 17 (IA) and etc. But at the present time, they're not what I consider recoverable coal. So we're talking about two different things; we're talking about the coal (IA) and the coal that may be there.

Sen. Poland: And you feel these figures, there may be a combination of the two?

McGee: (IA)

Sen. Poland: Recoverable. Do you feel those were put forth and that they're a combination of (IA)?

McGee: I think they're too high to be called recoverable coal. They may become a hypothetical and a known coal (IA) combination (IA)

Sen. Poland: Representative Brown.

Rep. Brown: Thank you, Madam Chairman. Smith, when did you first become involved in the subject at hand?

Smith: The subject being?

Rep. Brown: The entire subject, the subject of the land trade. When were you first directly involved in discussions relating to it and what land would be included or not included?

Smith: I would say just about a year ago, almost to today.

Rep. Brown: And how would other people within your division answer that question. Mr. McGee has just said that he became involved shortly before the matter got into

public press in October and at least another member of that same division said the same thing. How many members of your division were involved in these discussions?

Smith: Well, you mean involved in the actual discussions with the three parties?

Rep. Brown: Or participating, whether they were participating as advisors of the represented the State or whatever.

Smith: Oh, at one time or another, I would say there were several people involved. As to when, most intense, I say intense when we really began under the initial congressional deadline of approximately mid to late May, there were people involved, discussed at various lengths, not in any great detail, but it would include the staff, with (IA) backgrounds. I had talked to Mr. Denton on one or two occasions, again, not in great detail. Whatever other resources we have, our land people, our planning department.

Rep. Brown: It just seems very strange to me, we've already had two people with quite a lot of expertise who work for the State say that they did not become involved in these matters until a matter of just a couple of weeks before it got to the public press. Now, the way I interpret that, you know, I can only interpret this is that a policy decision was made first and the defense of the policy decision was put together afterwards including getting all the technical support. At least, that's certainly what it sounds like.

Smith: I couldn't agree with you more, Mr. Brown. If you have taken the time to read some of the information that I believe was passed on to you by the Governor, you would have seen that the final decision to go on this was not made until sometime after the 6th of December and...

Rep. Brown: That certainly was not the way we heard it on Legislative council.

Smith: Well, I don't know how you heard it in Legislative council. Since the State did not enter into any agreements until after the 6th of December, I don't see how you could feel... I would like to explore that, there seems to be some problem here. I'd be very happy if somebody would show me where the Administration committed itself with respect to the land trade until early December in Washington.

Sen. Poland: I think you're playing with semantics. It was published on about (IA) 29th of September and announced a public hearing on the 3rd of October and when we went down there, Representative Smith and Senator Rader...

: That was November, wasn't it?

Sen. Poland: Early part of November and...

Smith: May I ask...

(tape three)

Smith: ...when the decision was made. Now, I think it's very obvious that the proposal which we have right here today that was made public on the 1st of October,

is very, very different from the agreement that was finally negotiated and agreed to in Washington D.C. I will stand up and say that the Legislative Committee, Select Committee, of which you are a member, was told at that time that some very significant changes had been made pursuant to the public announcement and public presentation in early October, which, of course, was a specific reason why the Administration went public, was to get the information and the ideas of the public. The memo transmittal said, dated December 6, lays out in two or three pages what that public input was and precisely how the agreement document was changed. Among other things, the six townships involved in the Beluga area which contains the other 75% of the known coal reserves were dropped. Now, if Mr. Brown wishes to say that that was not a change, that the Administration had made up its mind before that, I would just let the Alaskan public look at those two things to make the decision.

Rep. Brown: Madam Chairman, I didn't intend to make Mr. Smith think that I was cross examining him. I was asking questions and just drawing conclusions from what seemed like the answer to questions had been. I still think, you know, I think I might well end up when push comes to shove, voting for the bill that now the Governor says we need that we didn't need a few weeks ago. But I still just have the feeling that there's an awful lot about the whole way in which this was done, is something I just don't like and I don't say - see that was but that's just a suspicion. Maybe this isn't a forum for suspicions but, you know, if he thinks I'm throwing spears at him, I'm not.

Sen. Poland: I believe that's taken care of all the people you had here without (IA).
Excuse me, Representative Rhode, did you have a further question?

Rep. Rhode: No. I thought maybe we were - I was going to ask unanimous consent for a ten minute stretch.

Break.

Sen. Poland: Professor Wolf. We've turned the table so we hope that you folks will be able to hear better. We were unable to get a microphone.

Wolf: My name is Ernest Wolf. I am employed by the University of Alaska (IA) Research Laboratory. I hope that the Committee is not disappointed in my testimony because how much you like (IA) more infonnation (IA) or which you have already gotten or might get better from these other people. I'm no expert on this coal trade or land trade here. I know I've been asked because I've thought a lot about the land situation in Alaska and the resource situation in Alaska and in the country and in the world. (IA) pipeline and the (IA) coal industry will also have to come here (IA) Washington to further make a deal (IA). A very short statement which I have (IA) to the Chairman and he asked me to just read this. It is a very (IA) broad statement and it touches on one aspect of the proposed trade:

"The land along with its resources in Alaska is one of the most important heritages that all people of the State have for individual benefit, as well as for providing a strong economy for the State. The land trade, as proposed, and as I understand the situation, would take State land that has mineral potential and place it in Native Corporation ownership. In return, the land that the State will

obtain has value for surface products (IA) which are less valuable than the wealth represented by the coal potential. The mineral land, if held by the State, can be leased to private industry. As provided for by the Settlement Act, a portion of the State's income from this land will go to each of the native corporations. The remaining portion of the mineral royalty receipts will go to the State for the benefit of all people of Alaska. Thus, in my opinion, the State should retain as much of its mineral resources as possible and make such resources available to the private sector for exploration and mining - which in the final analysis, will be for the good of all people of the State and the Nation."

My own statement of this and I might add a little for a statement that the mineral (IA) surface land (IA) cooked up by (IA) laboratory (IA) Fairbanks (IA) quadrangel which has been pretty well mined out (IA). Now if you want to adopt these (IA) northern (IA) cost the public an equivalent amount (IA) agriculture and 3/4 of you who think that's (IA) 47 years. (IA) at any rate (IA) 50 years anyway. Now I don't have a prepared statement. I've got down a number of observations that I've made about this (IA) which we've been hearing about today. First, I think that with all the insights the economists (IA) the economy studies that have been made. (IA) I think we're (IA) in fact, we've been talking about 8% and 10% (IA) present value (IA) gold return (IA) land economy (IA). We've got these other things which (IA) land (IA). Too many labels to really get down to business (IA) ten cents a ton and 33 and 1/3%. We've got inflation, all kinds of things and if you look ahead (IA) present value (IA) things is practically zero. Certainly (IA) resources will be zero if we consider that (IA) subsidy but before the land (IA) in 1956 the resources of Alaska had no dice. You couldn't get across (IA) file for (IA), And I submit (IA) again. (IA) but before (IA) in 1966, of Alaska (IA) again, the surface value (IA) drops very rapidly. The problem is (IA) back off (IA) land and we don't have to be economists or engineers (IA). But the basis of all production and the basis of all (IA). We're talking about land (IA) land (IA) of gold or recreation or climbing or whatever you want to do. The other thing I think we should say is that, as an old mining friend of mine used to say, everything we have comes out of the ground or off the ground. (IA) We've got to have land in order to keep up our agriculture potential and that's all that's standing between us and disaster right now. (IA) our farmers (IA). In order to have mining, you're going to have to have energy. (IA) of our civilization and our cultural attainment. And we're running (IA) consequences (IA) people throughout the State, right off the bat (IA). I don't care what the present value of coal is. It does supply (IA) people of the State and the nation and maybe the world (IA) pass through to the State. Now (IA) from the State's standpoint (IA) mining geologists and mineral economy (IA) one of the things that we don't seem to think about is that (IA) study reduces by an equal amount the potential (IA) and the result of this in this context is (IA) State (IA) known coal reserves decreases by that amount the potential for future discoveries on State land (IA) mining engineers on State land than we've got right now. Another incidence of high (IA) of discovery and development of mineral deposits (IA) takes longer to find than to develop. (IA) critical factor (IA) requires not related to discovery (IA) raise production (IA) rate of production and the result is (IA) state land and reserves. (IA) down the road somewhere (IA) We've got a few hundred pounds of (IA) here. I believe the price, I think we could say (IA) royalty would be the only loss to the State. (IA) Matanuska field (IA) we're going to have to have (IA) probably that first (IA) the corporation (IA) native lands (IA). We've got to realize that we are (IA) and we've got to take care of those needs first and then we can take care of the recreational needs and the environmental needs and the spiritual needs and so

on (IA) got a contract, they had a contract with the Federal Government (IA) several times (IA) Federal Government (IA) contract (IA). Thank you.

Sen. Poland: Are there any questions for Mr. Wolf? Representative Brown.

Rep. Brown: (IA)

Sen. Poland: Representative Rhode.

Rep. Rhode: Dr. Wolf, you mentioned in Dr. Breistline's statement there's, he felt that private industry was being asked to develop these resources particularly coal (IA). It was my understanding that if this land trade goes through and the Beluga coal fields wind up with the native corporation, they are considered private corporations and (IA) private industry was an efficient way to be developed.

Wolf: I think what Dr.Breistline meant there was that either way it was going to be developed by private industry (IA) incorporated (IA) private industry (IA) developed (IA)

Sen. Poland: Representative Brown.

Rep. Brown: Thank you Madam Chairman. Mr. Rhode said, you know, at least it seemed at the beginning of our statement that you're implying that if the land trade goes through, that the State would then lose the benefit of ever developing the resource at all. Of course, Representative Rhode questioned your answer, points out that's not really the case. I'm sure that, you know, and that there are economically feasible lands to develop in these areas and they're going to be developed whether somebody has a lease from the state or somebody has a lease from a private corporation or a native corporation or any corporation at all. So I would disagree with those implications at the beginning of the statement. That's all I have to say.

Sen. Poland: Representative Anderson.

Rep. Anderson: You say you work for the University of Alaska?

Wolf: Yes.

Rep. Anderson: And is this the University of Alaska's position of this?

Wolf: (IA) to that. I was asked to attend this hearing . I got a letter from Senator Poland. I think that I can say that much of what I've said might reflect (IA)

: I don't see why they should be involved anyway.

(IA)

Sen. Poland: (IA) Thank you for testifying Professor Wolf. We have one gentleman here who has to catch an airplane and he has asked me if he can testify at this time and I'll ask those that are having to wait to bear with us. Mr. Bill Waugeman.

Waugeman: My name is Bill Waugeman. Can you hear? I'm president of the Alaska Miners Association. I've been a coal miner in Alaska for 25 years. I'm one of the last of the breed. I think I know a little about it, at least I should. I have tried to analyze the situation as carefully as I can from various and sundry viewpoints and I, for one, and the Alaska Miners Association's position on this is that this trade (IA) regard to the coal land itself. Actually (IA) it's over the mental health lands. As far as I'm concerned, that should go too. What the people in Anchorage don't realize, I'm sure, some of these days, and it's not very far off, the Federal Government's going to come up with a fuel policy. When they come up with that fuel policy, it's not going to be good for the oil producers in the Anchorage area. It may not even be very good for the home owners as far as their heating facility is concerned in their homes. We have been using a high quality fuel in our boilers in this area ever since gas was struck at (IA) inlet. We've been using gas in our homes, too. Now this is a high quality fuel that should never be used in a boiler and my personal opinion is, and it's the opinion of many other people in the United States, that it shouldn't be used in the home. We have billions of tons of coal in the Beluga field as well as in the Nenana field and the other coal fields around here. And this is the kind of fuel that we should be using for boilers. So, it appears to me that one of these days that fuel office in Washington D.C. is going to finally come to the conclusion that they're going to have to write a policy and that policy regardless of the public (IA) something like this. Any place that has coal available will utilize that for their own heating and their (IA) and any other place that they can utilize that fuel. And oil and gas is going to be reserved for a better and higher use. Now, as far as the Alaska Miners Association is concerned, there are some other areas in this area with regard to hard rock minerals that I'm not going to touch on today. I'm just going to talk about coal. When you analyze that Beluga coal field, and I've prospected in there for about a week 25 years ago, 24 years ago. I didn't think too much of the field because it's too far away from transportation and too far away from the market. Our Administration, our State Administration, with it's no (IA) policy has turned off practically all of the investors, especially the mineral investors, in Alaska and if anything is going to be developed in the way of coal or minerals in Alaska, it's going to have to be done by local people. We had our oil for sale and the outfit that was interested in it, decided against it. I know one of the contributing factors was the fact that they didn't like this political climbing of the ladder. We need cheap power. It's a cold country and we need cheap heat. We should have utilized our coal resources. Now, frankly, it is the policy of the Miners Association to get as much of this land into private hands as possible. Although I thought the Native Land Claims Act, of 40 million acres, I can now see where I made a mistake. Unless we get more land into private hands in Alaska we're going to be a poor people. The only thing that makes wealth is natural resources. About the only natural resource we can develop in this country is the coal resources which we'll utilize ourselves and our precious metals. Why do I say the native corporation should have it? Since the State has turned off the biggest part of the potential dollars that would come in and develop our State, the only poeple that are going to have enough money to do this is going to be the native corporations, so if anybody (IA) these park lands (IA) is fuel, it looks to me like it's going to be the Cook Inlet Region, and I think the people in the Anchorage area should be encouraging, and I, for one, think it's a good idea. Thank you.

Sen. Poland: Thank you, Mr. Waugeman. Any questions? Representative Beirne.

Rep. Beirne: Mr. Waugeman, when you're talking about cheap energy, if the reason you believe that here in Alaska that coal would be any cheaper than hydroelectric power, you could put (IA) or out in some of the remote areas that (IA)

Waugeman: I'm glad you asked that question because that's one of the things I'm going to touch on. We put a few figures together on the Devils Canyon Dam deal, and we estimated that we could build a power plant (IA) developing the same amount of energy for just the interest cost on that project, basically the interest that we (IA). So the question is, yes; not only yes, but definitely yes, much cheaper. That construction cost has gotten pretty high.

Rep. Beirne: Madam Chairman, could we have the (IA)?

Sen. Poland: If Mr. Waugeman has the ...

(IA)

Waugeman: (IA) background material? I don't have i with me, but I can work it up for you very simply.

Sen. Poland: If you could send that to us in Juneau...

Waugeman: Sure.

Sen. Poland: Wednesday we're going to be having another hearing on this trade and we'd certainly welcome it.

Waugeman: (IA) done by a consulting engineering firm (IA) by a couple of our engineers.

Rep. Beirne: (IA)

Sen. Poland: Representative Osterback.

Rep. Osterback: Madam Chairman. You said it won't be too long before we'll get the bill from Washington D.C. saying that we can't burn fuel, gas in our homes?

Waugeman: I predict this to be true, yes.

Rep. Osterback: How many cubic feet (IA) home (IA) gas (IA) or whatever you're using?

Waugeman: Well, we're exporting that in the form of a product. We're manufacturing that. We're getting the benefit of the manufacturing profit on that and the utilization of our own manpower.

Rep. Osterback: But you're trying to tell us that we will still ship it over to Japan but we'll be outlawed to use it in our own homes. Nobody's going to give it to us, we'll have to buy it. But we're going to burn coal and let them burn gas.

Waugeman: Well, I don't know what (IA) contract already been let on (IA) this

sort of thing. All I'm saying is that gas is too good to be used for heating purposes. When you have a requirement for this high quality element for the purposes of (IA). There's darn few substitutes for gas, for petro-chemical (IA) and if we have a substitute (IA) substitute (IA) that's coal. Now what is wrong with building a power plant that can furnish you with electricity to heat with?

Rep. Osterback: That's not the question, the answer to the question I asked. We're going to outlaw ourselves through Washington that we can't burn gas but we're still going to ship it to Japan and what are they going to do? It's too good for us to use, but it's fine for the foreign countries?

Waugeman: Well, Japan uses it for heat because they use it for petro-chemical use?

Rep. Osterback: That's the question I asked you.

Waugeman: I don't know. I'm just saying, all I'm predicting is what I think the Federal Government is going to do with regard to a fuel policy for the United States. After all, we don't have 15 (IA) of gas return (IA)

Rep. Osterback: Thank you.

Sen. Poland: Representative Huntington?

Rep. Huntington: I have to kind of disagree with you on your use of coal potential on the basis that environmentalists seem to be pretty successful in blocking all uses of any kind of energy that has a puff of smoke to it.

Waugeman: Well, actually, when you take the analysis of the coal in the Beluga field and the Nenana field and well, those two main fields which are both accessible somewhat to the rail belt (IA) The sulfer in coal, in the coal, is low enough that they will meet the standards very easily. So the initial standards, to be exact, are no problem.

Rep. Huntington: Thank you.

Sen. Poland: Representative Brown.

Rep. Brown: Thank you Madam Chairman. Mr. Waugeman, you indicated that you thought that the resource more likely to be developed was (IA) a good portion we're talking about (IA) regional corporation (IA)

Waugeman: Well, I've - the State, I hope, will never see (IA) they would turn it over to somebody else.

Rep. Brown: I realize that, but I'm saying in that you (IA) way you introduce yourself (IA) you apparentl, feel that it's more likely to be developed, I'm just asking...

Waugeman: Yes, it's much better (IA) Cook Inlet. What I'm, what I really meant to say was I can see a great possiblitity of the Cook Inlet Region going into (IA) Now if you're going to build a power plant (IA) and put in full (IA) the only way you can go with that outfit is to have them own their own coal mine. We can't be dependent on somebody else for the coal. So (IA)

Rep. Brown: I notice that electric rates in Fairbanks is (IA) recently (IA) oil company that did not own coal resources.

Waugeman: Well, that is not the problem in that town. (IA) increase, that surcharge on fuel is for oil, not coal (IA)

Rep. Brown: I was, if you like playing games there a little bit, but at any rate I have, after showing all the disputes (IA) the Administration from earlier questions, I'd like to at least point out one thing to you. You were talking about the discouraged attitude of the people and miners and that (IA) in developing an industry (IA) requirements of the State and the attitudes of the Administration. I hope you did know that I did, at least on one issue (IA) the Administration did withdraw the sale relating (IA) to the mineral (IA) act.

Waugeman: Reluctantly.

(IA)

Waugeman: I like to be nice, too.

Rep. Brown: That's all I have to say.

Sen. Poland: Thank you Mr. Waugeman. Now a gentleman who's been most patient, the president of the Cook Inlet Native Corporation, Mr. Roy Huhndorf, and his attorney, Monroe Price.

Huhndorf: Thank you. Chairman Poland, Chairman Anderson and members of the Committee. My name is Roy Huhndorf and I am the President of the Cook Inlet Region, Inc. I had planned to give more than a blanket talk today but knowing that you're pressed for time, I shortened my presentation. The Cook Inlet Region Corporation consists of more than 6000 native shareholders.

Sen. Poland: Mr. Huhndorf, in all fairness to you, we think that we're going to be able to get a building for an additional four hours tomorrow and I hate to see you cut your testimony unless you feel that you can do so without harming your presentation.

Huhndorf: I will be happy to answer all questions that you may want to ask and perhaps continue with my presentation tomorrow?

Sen. Poland: You go ahead and take all the time you want.

Huhndorf: The Cook Inlet Region Corporation consists of more than 6000 native shareholders, most of whom are residents of the State of Alaska. I welcome the opportunity to appear before you to discuss the document entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area."

I come here as part of a long journey, a journey to secure for the people of Cook Inlet Region their land entitlement under the Alaska Native Claims Settlement Act.

The land that Cook Inlet obtained under the Alaska Native Claims Settlement Act is its birthright. We must protect that birthright. If we failed to protect that birthright, through inside selection of lands, the historical claims of our people might forever be lost or slowly reduced to nothing. The Region would be taxed out of existence shortly after 1991. There would not be a viable corporation.

In 1972, after the Act was passed, the Secretary withdrew what was mainly

mountain tops and glaciers for the Region. The State had already patented most of the low-lying land in the Region. Virtually all of the remaining low-lying land was committed to the State by the Secretary of the Interior in September, 1972 when Alaska vs. Morton was settled. This was done without consultation with the Region even though our interests were substantially affected.

The State had taken the land that the Federal government should have withdrawn for Cook Inlet Region under the Act.

This was the situation faced by our shareholders for over two years. In 1974, Senator Jackson and Congressman Meeds promised legislative relief for Cook Inlet Region. It appeared that a just solution could be worked out. On the event of such a solution, as it became clear that there was Federal support for our cause, Cook Inlet Region was urged by the State to change its legislative strategy so that the interests of the State's citizens would be better harmonized with the interests of Cook Inlet's shareholders. The Borough urged the Region to change its legislative goals and remove the Campbell Airstrip, Point Woronzof and other lands from consideration in the draft legislation then before Congress. In effect, the Region was urged by all sides not to look selfishly at its claims for a just settlement of its entitlement under the Alaska Native Claims Settlement Act. The Region was urged to work out with all the competing interests what would be a rational and thoughtful approach in which public needs could be melded with private needs.

This was one of the most difficult periods in the Corporation's history. We were being asked to abandon our past course of action and set out on an entirely new approach, one where we could be asked, where we would be asked to put the claims of the Region in the context of the general public interest.

Let me recount some of the hurdles that this new approach placed in our way: We were being asked to abandon claims to Point Campbell, Campbell Airstrip, and Point Woronzof in light of the Borough's interests. We were asked to abandon claims to the Swanson oil fields so that the present income of the State of Alaska could be maintained. We were asked by environmental groups to abandon claims that would affect the recreational interests, not only of Alaskans, but of the American public. We were asked to abandon claims that would adversely affect wildlife habitats or that would impair the quality of water. We were asked to abandon claims to lands, even though they were withdrawn for the Region, because they were located near potential capitol sites.

The Region agreed to work for a thoughtful general approach that would demonstrate that the interests of the native corporations would be consistent with the interests of the State as a whole. It was critical to show that the native corporations were concerned with orderly growth.

This approach meant more than eight months of constant negotiations. Working out a thoughtul solution has had its physical and mental toll on the voluntary, volunteer members of our Board of Directors who gave unselfishly of their own time.

We bargained in good faith. We followed the rules imposed by the State. I do not think we should be penalized for that. We thought

we had reached a settlement last December. Now, Madam Chairman, we fear that the bargaining rules may be changing after a settlement has been reached.

To be sure, we are not altogether pleased with the outcome of the settlement. We have had to shift more than half our land outside the boundaries of our Region against our will, and only with the deepest tolerance and concern by our sister Regions. The total surface land to which the Region is entitled has been reduced. We have agreed to a greater State and Federal role on some of our lands than would be the case under the Act.

Our village corporations were required to abandon selections in Lake Clark. We surrendered claims to other very valuable and important lands withdrawn for our selection. These are points that are overlooked. It is also overlooked that the native people lived on and occupied all the low-lying land in this area. The Act provides that the land for the native corporations should be similar to village land. Our Region is the one Region where the State had patented almost all such land for itself.

Also overlooked are some of the benefits to the State in the agreement. In the absence of the agreement there are certain hazards for the State. Some of the problems faced by the State in the absence of a negotiated settlement are as follows:

Possible elimination of a steady stream of income to the State from producing federal fields. Possible elimination of the chance to receive immediately the Campbell Airstrip for the Anchorage Borough. The possibility that the Ninth Circuit or the Congress will set aside the 1972 Agreement between the State and the Federal government on the ground that the agreement breached the federal trust responsibility to Cook Inlet Region. Long and painful litigation for every piece of land to which Cook Inlet is entitled. In addition and conversely, the State adds substantially to its Statehood entitlement. It improves its bargaining position in the upcoming Section 17, D-2 negotiations. The agreement also provided the State with its only coastline on the west coast of Cook Inlet, south of Tuxedni Bay. More generally, the agreement seeks to improve land holding patterns from the Talkeetnas to the mouth of the Kvichak.

Madam Chairman, I want to, at this time, also touch on a few issues that have become of particular concern.

The first is the relationship between this agreement and the Statehood Act. I have made it clear to the Chairman that we did not seek an amendment to the Statehood Act nor did we consider such an amendment necessary to carry out the terms of our agreement. The House Judiciary Committee in the House Journal for April 21, 1972, explaining A.S. 38.95.060(b), suggested that subsurface transfers could be accomplished by three way transfers with the Secretary of Interior. We relied on that suggestion and on our interpretation of Section 6 (i) of the Statehood Act. We maintain that there was no need for an Amendment to the Statehood Act for our transfer.

We fought to have the amendment removed from the Cook Inlet provision of the Statute. Second, there is the question whether this transfer is a bad precedent. No Region in Alaska had the concentration of State patented lands that faced Cook Inlet Region. In the first ten years after Statehood when these lands were selected by Alaska, the State was already on notice that the Natives had claims to such land. It is only because more than five million acres of low-lying land had been patented to the State in Cook, in the Cook Inlet Region that the Federal Government and the Congress looked to the State for participation in the solution. It is doubtful that this Legislature, this Legislature will find another instance where this is the case.

Third, there is the question of procedures for such land trades. I assure you that we support legislative efforts to make clearer the procedures to be followed by a Native Corporation seeking to work with the State. We have suffered because of the lack of such procedures. I think Cook Inlet did the best that could be done under the circumstances. We think such procedures should provide guidance on the following issues:

What steps should be taken to consult with local governments where land to be traded is in their vicinity.

At what point should the intention of the State to engage in exchange negotiations be made public and what steps should be taken to notify the public.

What role should the public play, if any, in the exchange negotiations.

At what point should tentative agreements be made public.

What size transfer agreement would be referred to the Legislature.

Under what circumstances, if any, should there be subsurface transfers. And if there can be such transfers, what special procedures should be developed.

How should value determinations be made, particularly for large tracts where there are no present obvious ways of calculating value.

Fourth, there is the question of the Beluga coal lands. These lands were a crucial part of the bargain. The State precluded all known producing oil fields. The Cook Inlet Region concurred - if the Beluga lands were included. We then agreed, after very hard bargaining, to the exclusion of over 75% of the coal-bearing lands because they had Mental Health status.

I believe this was a fair bargain. I also believe that erroneous figures have been employed to inflate the loss to the State and the gain to the Cook Inlet Region. The coal in the Capps Glacier lease is not clearly economic in the short run. It is uncertain that it will be developed before the coal in the Chuitna lease (coal that remains in State ownership). If that is so, the modest figures in the State geology report may, themselves, be too high.

It should also be made clear that the State had already transferred to private parties the right to extract the coal. If the State lost it's coal future, it is not because of this transaction, but because of the leases it entered into some years ago.

Finally, it has already been made clear from preliminary talks with some of the lessees that Cook Inlet will not be able to profit from the coal unless it contributes, through capital, to the acceleration of development. Our feeling is that we will be a good and helpful partner as lessor; better, we think, for the economy than the State as a partner.

(tape four)

And finally, Madam Chairman, I wish to summarize by saying that this agreement is a difficult and complex one. It represents months of negotiations, of consultations with the Anchorage Borough, with the various interests that are involved in the future of Alaska. It has been praised by Congressman Don Young. The Alaska delegation unanimously supported it.

It passed the Senate and House of Representatives unanimously. I am glad that the agreement is the subject of these discussions under your careful guidance. I am glad that questions as to the Governor's authority will be clarified by the Legislature's action. Many technical questions will arise as you go through your process of deliberation. We are ready to answer those questions. Our very future is at stake. We have done everything that we think could reasonably be expected of us. We are now asking for your support and approval.

Sen. Poland: Thank you, Mr. Huhndorf. Are there questions? Rep. Beirne.

Rep. Beirne: Madam Chairman. Mr. Huhndorf, in your testimony you refer in one place here to where the State (IA) transfer to private parties like (IA). Could you expand on that?

Huhnsdorf: I'm referring to the existing State leasing procedures (IA) so that the prospecting firm that's going to lease (IA) fixed a (IA) royalty (IA). I believe the figures are ten cents a ton.

Rep. Beirne: Does that mean then that if agreement is negotiated and you become the owners of this land (IA) anything lease which now is in effect will remain in effect and you have to honor any negotiations that have taken place prior to this.

Huhnsdorf: We believe that it is necessary (IA) lease.

Rep. Beirne: How large a portion (IA) that lease?

Huhnsdorf: I believe the entire tract in question is under some sort of computer contracting firm (IA) leases or leases themselves. Our geological consultants indicated that (IA) I would have to get the actual map and look at it but it appears the entire area in question would (IA) some preliminary (IA).

Rep. Beirne: Mr. Huhnsdorf, that means that you actually have purchased a land lord's rights, probably negotiations (IA).

Huhnsdorf: That is essentially correct.

Sen. Poland: Representative Brown.

Sen. Brown: I'd like to follow that up. In your statement, you stated that your understanding of, I guess the economic development of coal in that area was the developers or the people who have the leases might not be developing it but for future capital from - in your case, if the swap goes, the Cook Inlet Regional Corporation, if it is your understanding, have you been advised by those you consulted with that this is the case? Did I understand you?

Huhnsdorf: Yes. It is expected us (IA) to inject capital. We want to inject capital and (IA).

Rep. Brown: Well, there's at least some room for speculation that if the land remains State land, there might be some problems developing over coal resources (IA).

Huhnsdorf: I can't speak to that.

Rep. Brown: I notice on page four of your statement you said that the Cook Inlet Region surrendered claims to other very valuable and important land withdrawn for it's selection. Can you give us one or two examples of that?

Huhnsdorf: One example is approximately seven townships in the upper part of the Susitna-Matanuska Valley that was withdrawn for Regional selection (IA).. another area (IA)..

Rep. Brown: What are those townships (IA).

Huhnsdorf: There's basically only low-lying lands that come to us under normal withdrawal the Secretary made to us (IA) The other lands include the West side of the lower inlet about (IA). We desire to obtain those lands, therefore, we agreed to have the Secretary handle this withdrawal for us.

Rep. Brown: Have you already, have you made an irrevocable decision in relinquishing these claims (IA) position (IA) so that you wouldn't be able to go back and regain these claims without a lot of litigation and problems?

Huhnsdorf: The Statutes of the U.S. Congress guarantee that our rights will be re-established if the State (IA).

Rep. Brown: I'm very interested in, in the comments that you had in your statement on page six where you said that the Cook Inlet Region had suffered because of the lack of procedures for dealing with these trades. I'm sure you might have heard under my breath (IA) Osterback, he's suffered too. He's seen some of the pushing and pulling going on between the administration and the Legislature recently in this regard. I find the comments you make on pages six and seven very helpful, but, at least as far as I'm concerned, those address the things that I'm most disturbed about in this land trade. In my view, at least, many factors that - the things addressed in your statement are also some of the political realities regarding (IA) have done and other things that at least make me tentatively support the land trade. But, I am very distressed about some of the procedures that were followed by the administration and the lack of procedures and, at least what looked to me, like a lack of any involvement of the Legislature (IA)...if you were disturbed about something like (IA) administration, they were addressed to the procedures involved and I would not attempt to express an opinion on the substance of the trade itself. I suspect that we might have to, or we should go a lot broader in the areas of those things discussed on pages six and seven so that rather than just involving issues involving likely trades with native corporations, but other matters involving unilateral dis..., you know, prejudicial disposition of State resources by the administration with no Legislative input. That sort of thing could be addressed by (IA) and I thank you very much for your time in that regard.

Huhnsdorf: I would ask, Madam Chairman, that all (IA) Monroe Price our legal consultant in this matter (IA). He has been intimately associated with all of the policy (IA) documents that have been written inviting the trade and if there are questions that you want to ask him after I'm through, I'm sure that he'll be happy to answer them.

Sen. Poland: (IA) I had a question for you, Mr. Huhnsdorf. You know, this

consistent mention of the possible and probable Legislative relief that the U.S. Congress would provide for Cook Inlet in the event that the State didn't take any action here. You probably have an idea of what that might entail. Would you like, perhaps, to describe generally what you could expect in a settlement with someone other than the State?

Huhnsdorf: It would be difficult for me to say what would happen in the event that the Federal Government had to, Congress had to determine (IA) Cook Inlet on the grounds (IA) State participation. I can only say that our position, in my mind, is stronger than (IA). I say that because if the State, with the State now trying to pai_icipate, (IA) feeling I'm sure is (IA) I don't know what view Congress would take of that (IA) they could simply write that off as possible (IA) without paying as much attention to (IA) as they did (IA) personal. Maybe it's wrong, maybe that's not the case, but I know last spring when the (IA) was going on in the newspapers in Washington (IA) Congress was paying a lot of attention to the Anchorage Borough and to the State, and I'm not so sure that they'll do that next time.

Sen. Poland: You say that they wouldn't be, in your opinion, they wouldn't be, they would be less sympathetic to the State's needs if the State doesn't conclude the negotiations.

Huhnsdorf: Right. Well, and I don't want that to sound as a threat. I don't mean it as a threat. I just think that the situation, if the State (IA)..because for very real economic reasons it is impossible. The Congress might not feel that way.

Sen. Poland: Representative Huntington.

Rep. Huntington: Mr. Huhnsdorf, I'm very sorry to see this situation here (IA) football, but, at the same time, the agreement you have with the State now, the negotiated agreement, do you feel that your Region will become completely satisfied if there was no alternation to that agreement and it went through as is?

Huhnsdorf: Yes, sir. I believe the settlement represents a carefully balanced and carefully calculated working out of all the differences and kind of like (IA) so that I would say, that yes, it is a very finely tuned agreement for all three parties are in basic agreement. I think that would be the situation.

Sen. Poland: Senator Rhodes.

Sen. Rhodes: Mr. Huhnsdorf, I'm a little bit curious why, especially with regard to the Beluga lands, the Cook Inlet Region would be terribly anxious to accept them. There are leases on all the lands. The royalty on those leases is extremely small, the State literally gave those lands away to the detriment of the taxpayers and I can understand the State wanting to transfer that land, and I'm curious as to why or possibly how Cook Inlet envisions it will manage these lands to the best of it's corporate ability.

Huhnsdorf: We, as negotiators, are taking into consideration the fact that, under the existing Federal withdrawals, no more than six townships, if that, of land were available for Cook Inlet, that would satisfy the (IA) under this agreement, there are twenty townships, and that, to my Board of Directors, is very good

attractive and whether or not there was coal, whether or not the coal was leased or not, the surface value had a lot to do with decisions (IA). The very fact that we were getting land surrounding (IA) and these lands were low-lying (IA). That was one of the big considerations (IA).

Sen. Rhodes: Madam Chairman, I have one more question. In considering the value of the portion of the Beluga coal fields that would be conveyed to the Cook Inlet Corporation, has the spector of increased taxation on resource taxation, on these lands been considered by the Cook Inlet Corporation? The lease royalty is extremely low and there is a possibility that there may be additional increases at some point in the future in terms of (IA) Was this taken into account by the Cook Inlet Region and, if so, what was your analysis of it?

Huhnsdorf: Yes, Senator, it was. All I can say to that is that we do ourselves a good favor. We see the potential for (IA)under the (IA) we feel we can take our chances.

Sen. Poland: Thank you very much. Representative Beirne.

Rep. Beirne: Madam Chairman, may I just ask one question (IA) clarify my (IA) on coal (IA) a certain period of time and then we support the possibility of coal not really being (IA) for use for a long period of time, wouldn't it be a possibility that those leases will have to be renewed and that (IA) re-negotiated.

Huhnsdorf: That's a possibility.

Rep. Beirne: What would be your estimate of the time frame if we ever do use this coal for energy, when would that be? How long a period of time?

Huhnsdorf: I would agree with most estimates, the time frame would be (IA) early 1980s (IA)

Sen. Poland: Mr. Huhnsdorf, I'm going to ask you a question that you and I have discussed so I know the answer, but the reason I'm asking it is for the benefit of the Committee and the audience here is that, the first time that the select Beluga Committee met with the State, they said that Cook Inlet was not interested in the coal - you do intend to draw out the coal?

Huhnsdorf: Yes, we do.

Sen. Poland: Thank you. And I also wish to express my appreciation and I'm sure other members of the Committee here, on your thoughts on amending the Statehood Act. I know from earlier discussions with Mr. Huhnsdorf that this was true from the very beginning. They did not feel (IA) was needed and opposed and the State now tells us that they didn't feel it was needed either. We've now been left with Congressman Young wearing the hat of amending the Statehood Act, and I intend to talk to Congressman Young because I don't believe he dreamed that idea up by himself.

Huhnsdorf: Madam Chairman, we know that the Dept. of Interior wished that (IA)

Sen. Poland: I think you're exactly correct, Mr. Huhnsdorf. Representative Brown.

Rep. Brown: Mr. Huhnsdorf, Senator Rhodes asked you some questions about whether or not the (IA) tract is considering (IA) subject to the leases that most people in the State have had a relatively low royalty. But you also said, in your statement that the Cook Inlet Region may well be, you'd be putting capital rather than just asking or (IA) the people with coal (IA) leases into contingency development and maybe as a suggested and speculated answer to that, one little bit of leeway that you may have that the State does not have, is to re-negotiate those leases and getting higher (IA) if you're offering the developer capital to aid the owner in development of the resources so in addition to the question of renewal appearing, it also gives the idea that you're entering into the business transaction involving diffusion of capital, might well end up re-negotiating the lease. I would be reluctant to (IA) capital basis myself.

Sen. Poland: Are there further questions for Mr. Huhnsdorf? Representative Osterback (IA)

Rep. Osterback: Yes, Mr. Huhnsdorf. How, I still can't get it clear, how long will the State lease, if you do get the land? Will they expire in five years or two years or (IA) they expire based on the lease (IA)

Huhnsdorf: The leases are written in such a way..I'm not quite sure I understand that legally, but they're written in such a way that the holder can virtually perpetuate his lease holdings and there really isn't too much other than re-negotiation to some degree that the holder of the lease can do. And I know I told you at the proceedings that we will be the administrator of the lease, we will negotiate to the extent that we can to improve any detriments that we might be able to (IA) of the leases. But, again we don't see any real way of breaking the State's contract with the existing lease. We have not sought to do that, nor do we want to do that. We think that (IA) and we're prepared to live with that and do the best we can.

Rep. Osterback: Thank you.

Sen. Poland: Representative Cotton.

Rep. Cotton: Thank you. Mr. Huhnsdorf raised the question in his testimony that I have for Mr. Smith and he brought up the question of, if I could direct the question to Mr. Smith, the question of the procedures for such land trades; and, apparently the legality is somewhat in question whether the administration can do it by themselves without the approval of the Legislature and this is still in question, I assume.

Smith: (IA) The administration, after looking at the Statutes (IA) particularly the Statutes referring to Title 38.095 (IA) code permitted the same type of trade for the purposes of consolidating land ownership and management that was alluded to in Section 22(f) of the Claims Act. In that Section of the Claims Act, Congress gave the Secretary of the various Federal agencies the right for making this type of trade for land management and ownership consolidation purposes. Two months or three months after that bill was passed, the State

Legislature passed the Statute I just made reference to using some of the exact language of the Federal Act. So that it is our feeling that this trade dealing those criteria does not meet this Legislative context (IA) approval from a legal standpoint, I believe the Governor (IA) made clear (IA) a couple of things. One, it is a very large land trade - it does effect a sizeable amount of acreage and in the vicinity of 50% of the State's population and, as Senator Poland indicated that she and the Legislators would like the time to review, that was a very important feature. Secondly, and this was brought out again this week, he feels that the people have raised questions about whether or not such trades as this are legal whereas he feels that they are. He has said to the Legislature, while you are looking at this trade, if there is any question concerning the legality, we want you to vote on it. If you approve it, we feel that you approve the trade and having gone through that process, what with the addition of the administrations the last year, let us sit down and make sure there's no question about the method in which future land trades will be conducted; because, I think we feel quite strongly, having looked at what has happened during implementation (IA) that future land trades are going to be absolutely necessary if we're to have the type of action passed that are needed. They're probably aware that selections have occured right in the heart of two of our State parks and there has been an indication, certainly by the Legislature initially, that they felt these suitable (IA) set aside for park purposes. So, if there is to be a trade out, the administration is working with the Legislature. (IA) have by the administration can testify these procedures on how the Senate (IA) can set up some type of bill, perhaps emerge after the Legislature. Address (IA) trade (IA) to make sure that all agree in the future on this question of is it legal - what is precisely, the way to go about doing it no more is in question.

Rep. Cotton: Okay, I just have one further question. I wanted to know..in that case, I just interpret from your previous testimony and Commissioner Martin's previous testimony that this trade is going to kind of establish a precedent and I just wonder, and again, the point that Mr. Huhnsdorf brought up, what size transfer agreement should be referred to the Legislature. I mean, do you feel that that would be included in any legislation? Do you think that...

Smith: Well, it's (IA) that the Legislature at some point has a need to decide something. I think it would be an appropriate thing to view. I think I can say safety that I don't view the type, certainly not the complexities of the trade such as Cook Inlet and would feel (IA) something that was moving on the rise with the exception of the D-2 property because the landowners stated that already (IA) Claims Act which would be more or less between the State and Federal Governments (IA). I would emphasize the point that, yes, this is a first time, it is a pilot operation. I can safely say that it is the, by far the most drawn out, the most meticulously discussed and negotiated trade that affects State land. Many of the others, because of political necessity, (IA) just larger had to be done much quicker. For example, the State's monumental land selection four years ago last month. That probably could never have gone through what was gone through today.(IA) The Governor had indicated that public process and the opportunity for people to review, I mentioned earlier is subject to change, this is the process that we (IA) is appropriate (IA) from what we've just done and trying to look ahead with the help of the Legislature to set up a proper course for the next (IA) impossible. But this is the first attempt to do it.

Rep. Cotton: This is kind of a unique trade. I think most people agree to that. I mean, a unique situation. Other than the upcoming deed to the possible negotiations of those lands, do you have anything else in mind in the near future?

Smith: Well, as example, (IA) the most important (IA) that I foresee on the horizon are considerably smaller and just a minuscule amount compared to this one. There will be hearing later on in the month concerning proposals about somewhere between sixty or seventy acre land trade in the Yakutat area. We have (IA) selected a (IA) State park(IA) the village is included in that, up to two townships of land or close to it in this or close to the Chugiak forest right behind Anchorage. We have a number of situations, we have been approached by other people and corporations who, looking at their land patterns which by the formula in the Claims Act (IA) land ownership pact some anticipate the same thing. We've got the (IA). We've got the land, perhaps we can work together. I believe (IA) the State will be involved in for many years obviously recognizing the (IA) the Claims Act was passed, and it's starting to come home to us now. I think you realize the reality of the situation.

Rep. Cotton: In other words, then, if we would establish somewhat of a precedent here, in the future, smaller trades that you mentioned there that the Legislature probably wouldn't come into participation in those cases.

Smith: Yes, that's the present criteria. With something like the Yakutat situation, first, perhaps, long public hearings will be involved there. This is (IA) attitude (IA) this is why the government. (IA) Legislative point of view (IA).

Rep. Cotton: Okay.

Sen. Poland: Representative Anderson.

Rep. Anderson: I became concerned here, Mr. Smith, when I was told by one of the Bristol Bay Native Corporation officials that they had not been notified of, or that the State had failed to notify them of what was really going on. I read about it in the paper and wasn't too concerned because I naturally assumed that the State had made it's contact in Bristol Bay and would assume, since I represent that district where land is being talked about being traded, and the Chairman of the Resources Committee, I felt that I should have been notified, I mean, of the up-coming decisions that were being made. I think it was sloppily done and I think that both the Senate and the House Resources Committee members should have been notified of what was going on and I think it's causing the Cook Inlet Region some very serious concern now because of the sloppy manner in which it was handled. I think that's why I object to the...I wrote a letter to the Governor expressing my concern and I also sent a copy to Senator Poland stating that we certainly hope that in the future, some method of alerting the appropriate committees in the Legislature, or at least inform them what they intend to do. I think that may interest in the area is also, with the position that I have as House Resources Chairman in the Beluga area, we're talking about sub-surface minerals that the State is entitled to and we ought to take a very close look at that. I'd be very greatly, I mean, I'd be very happy with what Cook Inlet's been able to do - they've come down to Juneau at great expense - I know they've spent an awful lot of time doing the job that I think the State

government should have been doing and speaking as (IA) what's happening. And I think I'd like to compliment Mr. Huhnsdorf whose been extremely patient and I hope he won't be too - I hope he'll be patient a little bit longer because we do intend to look into this a little bit more.

Smith: I would like to say that, in respect to the area you represent and the Bristol Bay Native Corporation, the only impact on the area with respect to land ownership would be possibly twenty-five (IA) of land which the State (IA) title to and the State, under the Statehood Act, has a right to select land. The State, because of (IA) really not involved in land selection since the Claims Act was passed. That's like trying to tell (IA) what the State policy should be with respect to the public process of selecting future land. I think the extent to which the State is required or obligated to (IA) select lands for public trade, in a way, that's something we should very much discuss..what I'm trying to say is we are not in any way (IA) in the area, we were, in fact, putting State preference in the area (IA) nine days before the public hearing was held that the Div. of Lands (IA) each and every legislator in the State of Alaska Legislature gave notice of the public hearing, when and what it was, and where it was going to be held and two days before that time all (IA) President of the Senate and one or two other hearings of the Legislative Council which was going to be meeting in Anchorage and they made an exclusive offer to give them full and complete agreement concerning the matter and only after Representative Cotton showed up at the meeting. So, to the extent that you feel that the legislators are not contacted, I think I can say that the administration made a two phase attempt at that time to bring the Legislature on board, and it was not until the following month (IA) made through Legislative Council that we were even aware that the Legislature had been (IA) because as I say, we had tried (IA) unfounded. But I agree (IA) mentioned before that (IA) good outcome of this whole process may be the codification of the process in the future which both the administration and the Legislature would proceed along in the accomplishment of any future land trade.

Sen. Poland: Representative Kelley.

Rep. Kelley: Yes, earlier, Mr. Smith, earlier in your testimony you stated that the lands in the Beluga coal field which are not in this land swap, talking to the people that have the leases, that they felt those areas would be developed first, is that correct?

Smith: Yes, (IA)

Rep. Kelley: Okay, my question is, that when speaking to them, that, at that time, did you ever speak to them about the possibility of this time frame being reversed if, indeed, the land swap was to go through and the Native Corporation did, indeed, go partnerships with them in developing those leases? Would that reverse, you seem to be very strong on the feeling that the others would be developed first and I can see a very strong potential for the opposite happening, that the land...

Smith: It's hard to say exactly from (IA) how they view the operations. They expressed apprehension to me early when we made the State proposal public, we talked to them, let them know that we're interested in protecting (IA) and they

indicated a bit of apprehension there that they might in some way, in both cases, through future capital or (IA) whatever, be pressed into a (IA) developing their operation and we assured them that they were the lessees, in both cases and it was strictly up to them to take (IA) position or (IA) land owner (IA). A land owner might be, such as Cook Inlet (IA) mitigated (IA) indicated attempt to speed up development of those areas (IA) area I could not say right now whether (IA) measurable effect on that land to develop (IA) economic basis (IA) develop (IA) assumes that the leases (IA) would be developed first and we made the assumption that the State holdings would not be developed so we've given you the worst scenario in that respect (IA)

Sen. Poland: Any further question for Mr. Smith (IA). Thank you very much, Mr. Huhnsdorf. Dave Jackman.

Jackman: Madam Chairman, I appreciate this opportunity to appear before you. I'm David Jackman, State Co-Chairman of the Federal State Land Planning Commission for Alaska. I want to first review the actions of the Commission with respect to this land trade and make clear that the Commission at this time has nothing further to add regarding subjects of the land trade and then, second, to offer some of my, some thoughts on this trade that are solely my own. And I want to make this clear too, today, at this time. The Commission was presented with the rudimentary outline of this land exchange at one of it's earlier meetings which occured during the period of time that the Omnibus Act was being debated before the United States Congress. They communicated their views of general approval for this kind of a land trade effort. I think there are many of us who were concerned that when the Alaska Native Claims Settlement Act was passed, that it had laid the groundwork for, you might say, the callous dismembering of the State of Alaska - that if anything was to be gained in the long run, it required the greatest of efforts of all the parties involved, State, Federal, and Native, and try to make the best of what on paper looked like some rather unreasonable or unrealistic land patterns. The Commission viewed this proposed trade very much in that context, as a very highly motivated effort to try to resolve these kinds of problems which are likely to occur time and time again in the next few years in this State. At that time, the Commission did not have the ability to, given the other issues before it, to delve in great detail into the substance of the exchange and they have not done so as the meeting is adjourned today. But they did authorize me to say, and took formal action on this yesterday, again, supporting legislative reform, State law legislative reform, which would set down guidelines and procedures and standards for trades of this kind which would make, hopefully, a, would set a pattern so that important trades of this kind can be formed where there is reason for them, to move away from the strict equal value cash appraisal type of judgement to something that can successfully lay out the benefits in cost in a way that will make these trades possible in the future.

That was the conclusion which the Commission reached and that is the recommendation that I bring here today.

Second, on my own thoughts regarding this exchange, I want to say that I have the utmost respect for the efforts of all the parties that are involved from (IA) very much from the sidelines, I have been impressed greatly with the diligence with which and the good faith with which the parties have bargained and for the overall integrity of the entire process. I think that the Alaska Native Claims Settlement Act must be, we must remember that it was a Federal

settlement and I refer back to the remarks of Mr. Huhnsdorf has just made; therewere many unfortunate aspects of that settlement as they affected the Cook Inlet Region. The State, I think, wisely took notice of this and made every effort to cooperate in a wise and more just resolution of these claims. But I think at this junction, the State must look at this as eventually a land trade. The authority and the guidelines that are laid out in the State now, the law now speaks of equal value. Perhaps not equal value in a straight cash sense but the State, whatever the Federal failures in implementing the Settlement Act, they were Federal failures. I would submit that the State was not morally culpable in creating the situation in which Cook Inlet found itself. I want today to very briefly lay out what I see as some of the issues which have not yet been addressed. I think I can put your mind at ease - I'm no expert on coal nor do I intend to address (IA). As a matter of fact, and I've studied over this agreement, the Beluga coal field aspect seems one aspect that is least subject to question, (IA) my mind.

But I would like to try to note some issues that I think raise questions that must be answered before any of us can strike that final balance sheet. There is uncertainty involving this land trade, the count has been made several times that a lot remains to be done, that in a sense the selection period has been extended for two and a half years and that's the first point I'd like to make. I hope these questions can be answered, but I think there are major ones that we have to address. The extra-regional selection rights, as I'm sure you know, Cook Inlet has an opportunity to take another two and a half years to look at available Federal lands outside the Region and nominate lands that may be desirable for it to select, and also it can select up to about thirty townships of those lands. This provision underlines the basic theme of what I'm trying to say. It is very, very difficult to appraise what the ultimate effect of that provision will be. To begin with, those lands, absent this provision, would be lands the State could select. So there's clearly a cost involved to the State of Alaska and Cook Inlet and that's the provision in the agreement of extra regional selection rights. Let me explain that. These lands can be drawn from the so-called 17-D-1 lands or what remains of the public domain lands outside the region. The State has up to about, I think around thirty-five or forty million acres left to select in the Statehood Act entitlement (IA). Now, it's probably reasonable to assume that Cook Inlet will act in a rational manner and will try to find lands that will have high resource value, perhaps not just developable resources such as coal, minerals, oil and gas, but low-lying lands that may have other attributes that make them desirable. One of the main motivations of this exchange was that otherwise, they would wind up with mountains and glaciers. So, they're going to be looking for desirable and valuable lands and I only note this as a cost, or a loss, that has to be addressed in the equation because in effect, your displacing thirty townships that might otherwise rank fairly high in the unfolding scheme of State selection. And the loss in value, in my mind, would be roughly equal to the difference in value between those thirty townships off the top and the last thirty townships the State would otherwise be able to select in this thirty-five or forty million acres. And if that value were only $50 an acre, you're dealing with an order of magnitude of $60 million, so it is not an insubstantial consideration. On the other side of that question, and there is another side, it's quite possible, I suppose, that the United States Congress should decide that they've had enough of State selection and that all Federal land should be closed to State selection, that States should not be allowed to fulfill it's entitlement.

If this happens, there will be no loss, clearly; but I think that it would be a rather unlikely course of events.

The other thing that worries me about these extra regional selections, and there may be answers, I hope that there are, is that we have, within the Region, tried to consolidate land and improve land management patterns. But by creating the prospect of extra regional selection, thirty townships which can be selected in tracts no larger than one township, we create the prospect of several new isolated tracts of private lands scattered around the other areas of Alaska which may create land management problems of the very type we're trying to avoid to begin with. It's very difficult to know. They could all be consolidated in a single block in a very logical way, but they could be scattered in thirty separate tracts hither an yon across the State. So, all I suggest is there is a trade-off there that should be addressed.

There is a township pool a six township pool that will be created on land within the region and it's, the way I understand this agreement, if Cook Inlet desires, they can move any of those out side the region selection site into that township pool and take them within the region where the lands will tend to be more valuable - higher value land. As a matter of fact, the agreement sets forth an acre equivalency standard for those six townships of land based on a rough rule of some value of an acre being worth $500. So 138,00 acres at $500 an acre, again, is on the order of, I think, $35 million. Now, a lot of these lands would have been available perhaps for Cook Inlet to select after this agreement. There would have been surplus Federal property under (IA) of the Settlement Act. There are five categories of lands that could potentially wind up in this category - in the pool. As to two of them, I think they would otherwise have been available so there's no loss to the State there. But there's at least a potential of loss in terms of the other three categories that after this agreement, they would have been available for State selection and they are in the heavily impacted area, the northern Cook Inlet area and then converted back to land (IA). The other side of that coin is that (IA) region selection pool, the State has insured itself the right to consult the Secretary to strike up the 1500 acres. I'm sure that Mike Smith has explained these things to you so, again, my concern isn't that it's a bad deal - but it is unclear what kind of deal it is - that it's very, very difficult to anticipate how that will unfold and what the magnitude of the cost may be to the State.

Some of the plus factors that have to be noted. The Kameshak Bay land is one of the few stretches of coast line that is available on the western Cook Inlet shore. The Mulchatna lands, the Talkeetna lands, no one would gainsay the value of those lands. But even though it's a complex trade, what it boils down to within the region is this; the State's giving up twenty-one townships of land on the Kenai Peninsula and northern Cook Inlet in exchange for fifty-three townships in Kameshak Bay and Mulchatna range and the Talkeetna mountains plus the other factors that I normally term in the extra regional selections.

I think the other thing that's been a recurring theme in the testimony here today is what's going to happen, what kind of risks is the State running, or is the State running now, and they're very real. I think that Congress has, in a sense, indicated that they feel that Cook Inlet did not get a fair shake and that they will make some restitution of this if they fail, if Cook Inlet fails to win their court appeal, and get that kind of a result anyway in the straight-a-way. And in many respects I think the State's, or Mike Smith's pamphlet, has set forth some of the values involved in this trade, has undervalued the likeli-

hood that Cook Inlet may prevail in their court appeal. But, by the same token, I think it's over-valued the likelihood that State lands would be threatened by the outcome of that. I think the most logical result would be a remand to the District Court and perhaps ultimately a mandate to the Secretary that he is to find better lands but first, I think he would look at the Federal land, the D-2 lands, the D-1 in the area.

Turning to State land would at least involve him in more protracted..

(tape five)

(IA)

Jackman: ...they might turn the Swanson River oil revenues (IA) although it's my understanding (IA) copper or minerals (IA) have not been overturned. The State may very well lose the Swanson River oil revenues anyway. So these are answers. They're variables, they're very difficult to calculate. I don't know how they ultimately weigh out, I just know that...

There is a possibility, too, that some of these lands that we're getting in trade, and I'm speaking of the D-2 lands over in the Iliamna area, the State would have received anyway. From my work on Land Use Planning Commission, I think it's fair to say that some weaknesses, D-2 reserve proposal from the Secretary's book, were in Iliamna and the Lake Clark are.. And that under 17,D-2 the State can select those lands, they won't receive them until Congress acts. But they can go before Congress and make their case that those lands should not be put in federal reserves and tell them they should come to the State. So again, these lands that we have received in trade that are not available for us to select, now might come to us anyway. I think that's also true with respect to the Campbell tract. There's a question in my mind about what state of affairs had to take place to remove that from public holding in State use which would be the status that's guaranteed under this agreement. I think that it is unlikely, even if it does not pass the State, that the Federal Government would ever have disposed of that this way. That would destroy the protection of the (IA) watershed value, public (IA) state recreational value.

We've spoken of the bargaining position with respect to D-2 lands. That was a very difficult thing to anticipate. Certainly many of these lands have been eyed by the federal agencies as desirable additions to the national park system. But the question in my mind, to what extent this proposal will indignify those receommendations and make it difficult for the State to take another tack with respect to these lands. To sum up, I believe that the uncertainty of this agreement is perhaps one of the most disturbing factors. That here we, in effect, are fleshing out the settlement provisions, I'm speaking of (IA) the actual regional selections. For two and a half years in dispute under 7 (IA) all will share in those benefits, in the benefits of those extra regional selections. And that is as it should be. But we will not have certainty as to land status in Alaska for another (IA) years. And one of the things I think a lot of people have in mind with the passage of the Settlement Act is that all (IA) somewhat will be under (IA) close. We'll be able (IA) State selections and move forward from there. I will reiterate again that I'm only raising these questions because they trouble me and because I think they have to be addressed. And I think that when that (IA) deed is struck, the highest standard of public trust has to be applied because we're dealing with literally thousands and thousands of acres of public land that belongs to all the people of the

State. (IA)

I'm not speaking from prepared remarks today. I want to check down my list to make sure I covered all points that I wanted to cover. One final note on the Beluga coal fields. Again, I'm perhaps less troubled by that section of the agreement than anything else. I think it's clear that most of the valuable coal lands are still within State hands and that the real benefits (IA) coal zones will be just (IA) the spin-off benefits of development and that's almost one aspect of this trade that I think deserves... I'm not suggesting it doesn't deserve further (IA), but I'm really less concerned by that aspect after the mental health lands which were excluded from the trade. I believe that I'll close with that and ask if there are any questions.

Sen. Poland: Senator Rader.

Sen. Rader: Mr. Jackman, we have maybe three or four weeks within which to act on this under the Governor's request. And of course I don't think there's anyway to give that definition to the well thought-out policy which is mentioned here. Do you think there is anyway to give definition to that in the next three of four weeks?

Jackman: I think some of it can be analyzed with some degree of precision. I think that some of the costs involved, probably draft dollar figures can't be tied down, but I think order of magnitude can be approached and I'm not suggesting that I for a minute think that it is improper for any trade like this to go forward in the absence of exact equality of balance sheets. All I'm saying is that I think that over the next three or four weeks all the issues have to be brought out and examined.

Sen. Rader: Do you think that we could by committee report deal with some of these questions and perhaps review some legislative intent as to what the intent is to approve here on some of these State matters or not? Our problem is, we keep being presented with an accomplished agreement that people say (IA) hard to do and the proofs of negotiations and settlement and compromise. It's difficult for us to, at this point, to change that agreement, redefine the terms. We almost have to accept or reject it, don't we?

Jackman: I agree. I'm very troubled by that aspect. I don't think there is. It's a very complex agreement. I don't feel that I fully understand it and I spent several days trying to study it out. It is complicated. I don't know what the answer is. There is one thing that troubles me, it makes it very difficult to evaluate when there are so many exact points or provisions that are sort of yet to be fulfilled. As a matter of fact, I would suggest that if you want, in terms of the Legislature, again I would offer as much technical assistance (IA) trying to think about trades like this, can be provided for, but any one deed would be that transaction before completion in a given period of time, if you follow what I'm saying, is not stretched out over a period of years. But in this case, we are dealing with the same situation, something that will be negotiated in the context of the Omnibus Act. I'm not (IA) that. It probably was discussed (IA) State of Alaska. But again, we still have to (IA).

Sen. Rader: Even if we could qualify some of these dollar figures, you know, and put the values there, or some estimate - so what? Is that going to help us

in three weeks now in deciding whether to approve this or disapprove it?

Jackman: If I were in your position, I think that's certainly where I would start. Look and see if the equities are there in terms on what the State is giving and what the State is getting. Because the other elements, I think, there will be no question of good faith given the intent, the desire to make a better land management decision. I don't think that's assailable.

Sen. Poland: Thank you, Mr. Rader. Representative Brown.

Rep. Brown: My question, in light of Senator Rader's question. Do you think some of these things you've pointed out for the record as being inconclusive could be addressed by, in an equally effective way, by committee report or some form of committee... any kind of legislation, Senate document? Do you have any final proving board at all with respect to some of these questions or do you pretty well have whole (IA)?

(tape six)

Jackman: (IA) valid point because rational mechanism and if so use it for (IA). I think (IA)

Sen. Poland: (IA)

Rep. Brown: (IA) I suppose my question is, do you think that anything along the order suggested by Senator Rader, legislative intent, is going to be of any help at all to State (IA)

Jackman: I think that, this is subjective, (IA) to be effective here (IA) legislative guide telling the State how to execute that. In other words, with respect to what type of land (IA) protect (IA) protect the mechanism. In other words, how (IA) is going to play (IA) as opposed to things that are (IA) agreement is signed subject to (IA) cooperation, in terms of setting a time when this standard under which (IA) will occur. State (IA) there (IA) lands State has opportunity there (IA) select lands which the public would want to inspect things - Cook Inlet will be nominated by us. The State has the right to (IA) those lands could not then be selected by Cook Inlet. That problem could have influence. But I think that you will find that the State's interest (IA) Legislator (IA) and Legislator (IA)

(inaudible portion)

Jackman: Madam Chairman, I wonder if I could go into a little more detail. I know it is getting late. But this extra regional selection pool, the Secretary has protected those lands that are of federal concern. They cannot be drawn from the lands west of 161° West Meridian. I might suggest a very logical place, one place the State can't select. But under this agreement they cannot be drawn from there, they cannot be drawn from any of the D-1 areas included in the Secretary's D-2 proposals. They cannot be drawn from any of the D-1 areas that surround the areas of ecological concern. So what I'm saying is we're throwing - that this pool comes from those very lands that will be the prime candidate for future State selection and they have up to three years to nominate those. We won't know really for two and a half years, I believe, what lands

they're talking about and that's the basic sum of my concern. Also, there is a buffer zone provided as perhaps there should be around other native coporate and village lands. But the very existence of that buffer zone again will create a non-compact, a scattered pattern of private lands which one of the land management objectives that, in my mind, we ought to be trying to get away from. And this one theme I forgot to mention because I didn't have a formal presentation, that is worth mentioning, I think. I think the question could be raised - if the loss of control over these tracts of lands in the northern Cook Inlet area and on the Kenai Peninsula isn't a very great loss in terms of the State's ability to direct or control the timing of development and the disposal of lands, we're really giving over to a private corporation the ultimate decisions on how to dispose of those lands, subdivide them, and what role they'll play in community growth in the most heavily impacted areas of the State. The counter-argument could be made that it's in the northern Cook Inlet, the Anchorage Bowl, the Kenai Peninsula region, that we should really be hanging onto some of the remaining tracts of public land or at least disposing of lands fairly carefully with some planning and design. That's just another factor, I think, that should be weighed.

Sen. Poland: Representative Hershberger.

Rep. Hershberger: The fact that we're hanging onto lands around there, started this whole problem.

Jackman: Sure it did. It was a Federal Government problem. That's my point. And at this point, we have an obligation, in good faith, to try to help with the resolution of that, but I don't think it's fair to say the State was really morally culpable at the time of the Settlement Act or the Secretary's withdrawal. So what happened in this region?

Rep. Hershberger: Now this whole (IA) and questions that have not solved this as far as my experience goes. And I appreciate your concern, very important questions that you raised. Mr. Rader (IA) for three weeks if we have an agreement here that parties have agreed to and certainly some of this must have been thought of at the time that it was entered into...

(inaudible - two people talking at once)

Rep. Hershberger: Perhaps I am painting things so black, I'm really afraid (IA) said tonight (IA) fall asleep.

Jackman: I can honestly say that every member of, here present, that I've been going over these things. That I think, I hope the question - that answers are there. Some of the answers have become more clear to me as I read through the agreement. I'm not saying that there perhaps aren't some answers to these questions but at this point in my study of the thing I think that these are difficult issues that have to...

Sen. Poland: Senator Rader.

Sen. Rader: Mr. Jackman, in your mulling through this ignorance, in your own mind, do you think that we can do much be, let's say this (IA) committee report, couple of bills?

Jackman: It would be difficult in my mind because so many of the terms of the agreement are, even though executory, the (IA) discretion is pretty well laid out within the... As to the excercise of some of the State discretion, that would be true, but a major area of concern is Secretarial discretion and the discretion of Cook Inlet region and clearly we can't bind them.

Sen. Rader: At least to some extent we have a five party agreement here and our legislative intent would be the understanding of one party of what that agreement meant and I suppose that if the other parties didn't agree with that, you'd say there was a failure of the minds to work on an agreement even though we tentatively approved it. If the other parties didn't agree, somebody thought that our interpretation was not their interpretation. I don't know how you contract by statute, that's kind of a new concept, but we have a problem situation here. I'm wondering if we might not be able to, in effect, actually define some of the terms and the areas that concern us. I think their concerns are representative and very helpful. I think their testimony has added new dimensions to our hearings and our understanding of this problem. I'm just groping for some way in three weeks here with the good auspices of the Cook Inlet people and the Legislature, the Executive branch of this government, to try to sit down and define at least what two of the parties maybe agree upon. It's a matter of working out, I think, virtually the policy raised. I think that would be very helpful.

(tape seven)

Jackman: ...kind of disturb me in a way because even though the native corporations have agreed to this, they may not be completely satisfied and I don't think they are completely satisfied, but they have agreed to it in good faith. And the State has agreed to it in good faith and I doubt that the State is completely satisfied with this swap either. It's all been in good faith. Congress has approved it. At some time along the line, someone is going to have to bite the bullet and settle it, which is what the Legislature is going to have to do in a matter of a month or six weeks, as Senator Rader mentioned. But I don't think that the problem is resolved and twenty years from now history is only going to tell us who got the best deal out of this. This is just about the size of it as I see it. I don't see how we can tell who's going to get the best deal. Whatever (IA) administrate, I'm sure. But I'm just at a loss at how we're going to add any more to it in two or three weeks. After all, we must have put (IA) off. Whether it's good or bad. History will tell us. (IA)

Sen. Poland: Representative Anderson.

Rep. Anderson: Senator Poland, Mr. Jackman and I (IA) listened to the testimony of Mr. Huhndorf, I think you expressed his concern. I think you heard that, didn't you, that he had the very same concerns that you do, that there is no structure, no vehicle yet by the State by which an exchange of this nature can occur. And I heard it very clearly in my discussion with their attorney, I heard this very clearly. It's not a new thing, that this thing, at least to my attention anyway, it has been addressed by the Cook Inlet people. I think it's a meaningful concern and certainly concerns me also. But what is the answer, you know, in the time frame, how can you address adequately, I don't know.

Jackman: I think that the very fact that we're here is evidence of a real

milestone. Land trades like this couldn't even be thought about before Section 22-F had been passed, before we really looked at the problem we're facing with the Settlement Act. I couldn't be more supportive of the needs for these kinds of trades and that's why I think some legislative reform, some procedure setting how we're going to go about it, what the periods of review will be. And I'm not so sure that in the future you can expect a Legislature to negotiate this thing. I mean I think this all may come back to you in an administrative manner but the guidelines can be set down, the rules of the road. So I really believe and this is what the Commissioner sent me over to say, they feel very strongly that whatever happens in the context of this exchange, these kinds of exchanges are absolutely essential.

Sen. Poland: Representative Huntington.

Rep. Huntington: Yes, I'm looking at it, I've got no education, I (IA) I don't see any problem with it myself. If the State of Alaska can't handle it's own affairs (IA) so far. And I don't think that the trading off of this land is going to hurt the State of Alaska one bit. I think it's better for (IA) hands and see what they can do and come up with some solutions to the problem. I think the State of Alaska has got a lot to learn from the people that have lived here a long time. You get all the fine education and stuff - you start fooling around with problems, you start fooling around with lawyers, you don't know which one is right. (IA)

(inaudible)

Sen. Poland: Are there any further questions for Mr. Jackman? Thank you and I hope, David, you will be able to attend the hearing in Juneau on Wednesday. There will be many other legislators there that were unable to attend today.

Jackman: Perhaps I could call you later on that but there will be some problems. We have a series of meetings scheduled with Representatives from the House and Senate Interior Committee. But I may be able to arrange it, I just can't make a committment right now.

Sen. Poland: Thank you very much.

: Let me ask Mr. Jackman. Mr. Jackman, how much time could you devote to this in the next two or three weeks with perhaps staff and this committee and others in trying to go through some of these things you're talking about? (IA)

Jackman: I simply don't have the time in the next two or three weeks, Senator. I'm not trying to be unhelpful. I'll try to spend as much time as I can, but I don't see how I can make a large time slot.

: (IA) telephone.

Jackman: I suppose so.

Sen. Poland: We have time for one more witness and then we're going to take a break for dinner. We will resume at seven o'clock and continue on until 9:00 this evening. Those that have not been heard tonight, we're attempting to make

arrangements and we will make some kind of arrangements but we're attempting to get this room again tomorrow morning.

: I haven't approached this in the budget yet but we should be able to get this room.

Sen. Poland: We should be able to, Representative Brown. The next person we have here is Sam McDowell of the Alaska Fisheries Resources and I just welcome you.

McDowell: Senator Poland, members of the committee and ladies and gentlemen. My name is Sam McDowell. I'm wearing two hats also. Tonight I'm wearing the hat of Chairman of the environmental section of our League. We want to go on record that we do feel that the State of Alaska and the people who represent our interests have worked very diligently and we do support this trade, however, with some reservations. We feel that there're some points that should be touched on that have not to my knowledge been touched on. In this trade area there is considerable private land holdings. We feel that these people that do have these land holdings should not be financially hurt due to this trade. Therefore, we feel that the State of Alaska should make some provisions to insure that they do have access to their private property. We are a part of and, I'm happy to say, the State of Alaska has gone on record with a letter to us, that they also endorse many easements along all streams, all lakes and along coastlines in the State of Alaska. We questioned the State of accepting as a standard criteria the recent decision of Secretary of Interior, Kleppe. As I'm sure that most of you are aware, this decision is in litigation. We would be very disappointed if the State puts themselves in the position where they also have to be incorporated into this litigation. I understand that this criteria that's being worked out in this trade will possibly and most likely be used in future trades, for various other lands that various native regional corporations own and the State should decide to bargain. For this reason, we feel that it's extremely important that this matter be addressed and, hopefully, taken care of so that all Alaskans that are involved in this are protected. Thank you.

Sen. Poland: Representative Rhode.

Rep. Rhode: Mr. McDowell, in my understanding of your statement, you feel that the lease holder within any of this area that the State owns and is going to trade off should be protected?

Mc.Dowell: We feel this land that is being traded has been used by especially a lot of Alaskans for many, many years. Lots of them get in their float planes, fly over there. The land was put out many years ago as captain flags. They purchased this land, they have built their summer homes and they rely upon this as their recreational retreat. Now it's possible, if these easements along these lakes or along these streams are not granted for, this title to this land will fall to the regional corporations. Therefore, their investments, for all practical purposes, would be lost. And this is something that's very, very serious. Now, we do, like I said before, want this matter in the record. We feel the Cook Inlet Native Corporation has acted in good faith, we feel the State has. Now, we will endorse this trade with these reservations. We feel that the State of Alaska and especially our League has a responsibility. We are dedicated to the protection of the woods, waters, and wildlife and fish of

this State. And we ask that you pursue this to try to make Alaska a better place to live. And we feel it would be a horrible mistake to take and make a practice to go in and trade off land that people have a substantial investment because we all came to Alaska, I would say almost 100% of us, to enjoy Alaska. And I think it would be an absolute disaster for the people who are sitting in this room at this negotiating table and make an error in their judgement whereby many Alaskans could get hurt.

Sen. Poland: Representative Brown.

Rep. Brown: I was just saying, the reason I asked that question, we have a problem in the Kachemak Bay area and you wouldn't mind if I quote you on the protection of the resources would you?

McDowell: No sir.

: I suppose this is a question for whoever wants to answer it. (IA) staff attorney Berry or someone else, I'm sorry, Director of Legal Services (IA) be more (IA). What does happen? I know that when the State has land in, which is private in holdings, it has a legal obligation to try (IA) egress. What happens when (IA) having trade or sell us all of that land to a private entity? Does that private entity still have some of those same obligations or not? The question is (IA) occurred to me, it never occurred to me before. (IA)

: With respect to land involved here (IA) one of our federal land. Those lands from the Federal Government to Cook Inlet (IA) will come with the same restrictions on them that all the land under the Native Claim Act. (IA) They will have to have seventeen feet either put on - same process (IA) I wonder (IA) that is some State's land (IA) Cook Inlet. These lands will first go to the Secretary of the Interior, to the Federal Government. And he will then take those lands and (IA) same process as all the rest of these lands already been (IA) Will put on (IA)

: (IA) in the Act?

: procedure in the Act. . .

: Because I know (IA) they're already State land (IA)

: Yes. They will be put on. In addition, the greviance in the Legislature (IA) that on lands the State does transfer (IA) those lands, the State will retain (IA) and all dedicated or (IA) highways or otherwise. So (IA) but that where the State has (IA) that he was going to require (IA) So the State (IA)

: I wonder what Mr. Huhndorf and Mr. Price have to say about this?

Reeves: I'm Jim Reeves, attorney (IA). There's one further layer of protection to (IA) again one which applies to protect all the land (IA) to the Federal Government in the regional (IA). That (IA) Section 14-B (IA) which protects all (IA) Certainly 14-G (IA) protect all (IA). So that I think, you know, a number of instances in which one would (IA) context would be very few. I hate to say this but if I had (IA) I would hate to rely on my access to (IA) on the

basis of how somebody is going to interpret that phrase. (IA) one of the biggest question marks of the whole Act.

: I'm sorry, I'm sorry. Your (IA) have taken the position that every State grant under State law to the third party creates (IA). And the Bureau of Land Management's people are specifically identifying everyone in the entire involved (IA) setting before in detail and (IA). Originally, you're right, that was very complex (IA)

: I question that but anyway I wonder what the people from Cook Inlet have to say on the question?

: Well, I think personally (IA) testify (IA) So whatever the body is (IA)

: I don't really know if anybody answered my question but I'll just try to answer your question. But I also (IA) call for witnesses. But of course you were talking about two different things. One was the question (IA). But the other question was, you went ahead and said you assumed that the way in which this land trade is being carried out is, or will be in many respects, to be the precedent for land trades in the future and I sure don't think that's true. That's the whole point, I think, of the Bill that's sitting in the Senate. Some of the reasons for the disagreements that you heard here earlier and some of the suggestions the Legislation. So I hope very much that it's not a precedent. I don't think there's anything wrong in saying that the way in which Cook Inlet proceeded but I have some question in my mind about the other two parties. That, of course, is not something that we have to decide in the next two or three weeks. That's legislation that would affect future negotiations. Hopefully, we won't feel under the gun and we can push that through with the proper amounts of Committee deliberation. I'm sure that that's what's intended. I don't think that it's a precedent for the way in which land trades...(IA) native groups or any kind of disposal of large amounts of natural resources that the Administration has in the future. At least what I was (IA) legislation is something - not just addressed to land trades involving native lands but ways of properly and necessarily restricting the Executive in the ways in which he's talking about proposals and natural resources in the State of Alaska (IA)

McDowell: I believe the wording in this easement is frequent and submit (IA) use. Now again I question you. I have friends that have cabins over there that walk two and a half, three miles across country to go to their cabin. Now I have heard provisions not made (IA) that there are many easements along the lakes and along the streams. Suppose you Legislators go ahead and endorse this, and we are endorsing this, like I say, with exceptions and what happens if this thing goes to court and all of a sudden it's decided that perhaps the natives of this State do have a right to this. Will this affect this trade? Now definitely it's going to affect the people in the (IA) and there's going to be some very irate people when they find out all of a sudden, when all the smoke clears, that they no longer have access to their private holdings. Now if you walk down -as I interpret this and I've been very close to it - if there is no access on these streams and if you should even be in a boat and step out of that boat -you are trespassing. I don't think the State of Alaska should take and pass any laws that are against or for any segment of the population. This is

what I'm asking. I'm asking you to give very serious consideration when you do make this trade, that you do look out for all Alaskans and I don't think that's an unfair request. Thank you.

Sen. Poland: Thank you Mr. McDowell. We will take our dinner break now.

Sen. Poland: We're going to resume. I don't care whether people (IA) or not. Helen Neinhauser?

(many people talking at once)

Neinhauser: My name is Helen Neinhauser and I am testifying for myself this evening. I am a resident of Anchorage and have been a resident of Alaska for nearly seventeen years. I support the land trade and urge the Legislature to approve it. My reason for supporting the land trade is that it just plain makes sense. It's effect will be to place the bulk of the land in private hands and to retain land which ought not to be developed in public ownership. This is rational land ownership and is in the best interest of all the residents of the State. If land is suitable for development, whether it be coal mining or residential use, it ought to be in private hands. The only question is, which private hands. In my opinion, it is fair that Cook Inlet Region be the private party which develops that portion of Alaska's land. The lands originally available to them under NCSA were not fair to Cook Inlet. If the land trade does not go through, I fear that the result will be unsatisfactory to Anchorage residents and detrimental to the State as a whole. It is particulary important to Anchorage residents that as a result of the trade, the Campbell Tract, Point Larenso, Point Campbell, and Goose Lake lands will be retained in public ownership for park and recreation purposes. Can we place a dollar value on what these park lands will mean to Anchorage residents in the future? Projections of Anchorage's future population are frightening. As our population grows, the present de facto open spaces will be filled in. What price can we set on the peace of mind and the physical excercise derived from a two hour ski trip in a nearby park, all the time a busy urban resident may have. As one of the originors of the Talkeetna Mountain State park proposal, now also before you, I am particulary happy that as a result of the land trade, the State will obtain ownership of key sections of the proposals which were formally eligible for native selection. These lands are valuable recreation lands but totally unsuited for development. The capitol will almost surely go into this vicinity. Can we put a dollar value on what that park will mean to future residents of the capitol? Or what it will mean to Anchorage and Matanuska Valley residents where local parks and the Chugach are overcrowded and can't afford the time to get to Talkeetna. I visited Lake Clark last summer and loved it. One of the loveliest spots I've seen in a State full of beauty. Lake Kontrashibuna is also very special and has fantastic fishing. Both belong in a national park where their use will be available to all for generations to come. Uncontrolled private development along the shores of Lake Clark would be a tragedy. The natives relinquished their claims to this area as a part of the trade leaving it in federal ownership thereby opening the way for a park. It will be used and enjoyed by many Alaskans. What dollar value can be placed on this? Private ownership to the Moose Range will be held to a lower level than would be the case without the trade so I cannot object. The selections in the Iliamna area are sensible inasmuch as they give the State D-2 lands that would not otherwise be available to them. They will doubtlessly

select remaining federal lands in the region giving them basic control of the area, important to the fisheries resource and more compatible with the native ownership in the area than would be federal ownership. There has been a lot of talk about the dollar value of what the State will give up. Those who talk about this are not looking at the whole picture. They are not talking about what the State will gain. And they certainly are not looking at what the people of the State will gain by continued public ownership by the Federal Government of such areas as Lake Clark and the Moose Range. Besides the intangible values, there are others. What about the taxes that will eventually accrue to the State or political subdivisions from private property ownership of developable land. What about taxes on profits of this (IA) taking place on these lands. What about the values to the Iliamna fisheries, of State control of the lands in the area? What about the reduced cost to the State that will occur because of the development that will take place on native lands will now be closer to population centers and therefore less expensive to service? One gentlemen said earlier that we some recreational lands but we need to worry about food and housing first. It seems to me that he was forgetting that there are other coal deposits as well as oil and gas fields that will remain in State ownership. There isn't another Campbell tract or Lake Clark. It is crucial that the Legislature look at the whole picture. As you do, ask yourselves some questions. What is it we value about living in Alaska? What is the best way to achieve a balance between necessary private development of Alaska's mineral resources and public protection of Alaska's fantastic scenic resources? What must we do in the face of increasing development to keep Alaska a special place to live?

Sen. Poland: Thank you Helen. There's one item I would like to have cleared up. It's my understanding that the villages have regained their lands along the lake.

Neinhauser: It's my understanding that the lake ownership where Cook Inlet, in the more mountainous end of the lake - that will go to federal... you're talking about Lake Clark? But (IA) will retain it's ownership.

Sen. Poland: Perhaps Mr. Huhndorf could clear up that point. Do the villages retain the land along the lake?

Huhndorf: No. The villages have agreed under this exchange to (IA)

Sen. Poland: Thank you.

Neinhauser: Helen Heinhauser.

Sen. Poland: Yes. (IA) Were there any questions from the committee? If not, thank you very much.

Neinhauser: Thank you.

Sen. Poland: Virginia dal Piaz?

(inaudible)

: There won't be any snow machines going by.

dal Piaz: I'm glad (IA)

: ... the trade.

dal Piaz: private joke. That Talkeetna Mountain hearing this morning (IA) 500 is going right by. (IA) I think Neils arranged it.

dal Piaz: My name is Virginia dal Piaz and I'm President of the Upper Cook Inlet Chapter of the Alaska Conservation Society. We've not previously had the public opportunity to announce our position on the Cook Inlet land trade and we appreciate the chance to tell the Legislature that we do favor the trade. We support totally the concept of trading lands to facilitate rational ownership patterns and management. Federal, State, native and other land owners have different goals as owners and managers of Alaska's land. It is therefore reasonable and laudible to negotiate trades which, on the balance, benefit all parties concerned. We are thankful the State Administration perceived the need for a land trade with Cook Inlet Region and devoted so much energy to this settlement. We're pleased that Congress sought this Act quickly and supported the trade, thus placing their trust in Alaska negotiators familiar with the Cook Inlet land situation. We're equally appreciative that members of the Legislature have taken an interest in the trade. It gives us faith in the checks and balances of government. However, we feel that the energies of the detractors of the Cook Inlet trade are misplaced. Early October, '75 the State Administration first announced the conditions of the trade. The time allowed for public input appeared ludicrously short. However, since then, the public has had ample opportunity to consider the proposal and the trade has been altered as the result of public input. The land trade approved by Congress is favorable to State interests and urge the Legislature to lend its support to the final agreement. Now, I'll briefly discuss a few specifics. It's our feeling that the Kenai Moose Range should be held substantially intact. To this extent, the pieces of the Moose Range were traded to the Cook Inlet natives, those pieces should be located on the edge of the range away from prime wildlife habitat. Further we hope that this is the last time the Moose Range's borders are tampered with thus reducing the size of the range. We will urge the Federal Government to protect the Canus system from development and to designate eligible parks of the range as wilderness. We find the Cook Inlet land trade in keeping with our interest in the Kenai Moose Range although we regret that it was necessary for the Federal Government to trade away any portion of the range. This is one of the most heavily used outdoor recreation areas in the State. The townships the State will pick up in the Talkeetna Mts. are critical additions to the proposed Talkeetna Mt. State Park. The Upper Cook Inlet Chapter of the ACS is on record in strong support of this park proposal. We're happy that Campbell Airstrip, Point Woronzof, Point Campbell and Goose Lake are all being retained in public ownership. We're paticularly pleased that Congressional action (IA) conveyance of the Campbell Airstrip tract to a plan for a (IA) Bi-centennial park. We will be watching implementation of the selection pool that Mr. Jackman alluded to earlier which is 1C-2A, page 39-40 of the agreement document. Important potential park and open space acerage on the Anchorage hillside may be declared federal surplus property and we intend to keep an eye on any conveyance of such critical acerage from public to private ownership. I'll be adding when I send in my testimony a little more in depth on that particular subject. We're hopeful that the land trade will ultimately lead to State management of Iliamna watershed, a region of

extreme value for fish habitat. Moreover, we support federal ownership of the lands around Lake Clark and areas serving as protection for the valuable recreation land. It appears that by reducing native land ownership in the Lake Clark, Lake Iliamna region, the State and Federal governments are moving closer to a workable management plan for that portion of the State. Finally a few comments on the Beluga coal fields. Since the State has retained the land of highest value for coal production, it, nevertheless, has given up many acres of potentially energy rich resource land. It's time the State looked beyond how many dollars worth of nonrenewable resources we control. It's obvious that the State has to give something of value in order to receive valuable renewable resource land including the possibility of gaining control of the extremely valuable fish and wildlife habitat around Iliamna. What the State is giving up in revenue might very well accrue to tax periods of one generation. What it is gaining is control of renewable resources that will benefit many generations of State citizens. I think that the Beluga fields are a reasonable loss for what the State will gain including retention of revenue from the Moose Range oil field. In conclusion, the Upper Cook Inlet Chapter of the Alskan Conservation Society strongly supports the Cook Inlet land trade. We urge the Legislature to do the same. We also wish to thank the committee for holding these hearings and allowing the public to express their views.

Sen. Poland: Thank you. Are there any questions from the committee?

dal Piaz: I also will ask the committee's advise on how to handle the following: the Alaska representative from the Sierra Club had to catch a plane and left his testimony with me. There are quite a few copies here. I could just give them to you or I could read them.

Sen. Poland: You can just hand them out to us and we'll put them (IA). If there's time at the end, you might want to read it but otherwise, I'd like to go ahead and hear the people that are here. Senator Rader, did you have a question?

Sen. Rader: One brief question. What is your position on the acquisition of Bristol Bay lands by the State of Alaska (IA) aspects of that land acquisition? Do you feel that's of particular value for conservation purposes?

dal Piaz: I would have to - I must admit I'm not really familiar with that area. I will find out an answer for our group.

(inaudible)

dal Piaz: I can just summarize briefly the Sierra Club statement is in support of this land trade (IA)

Sen. Poland: Mr. Homer Burrell?

Burrell: Madam Chairman, members of the Senate and House Resources Committees, Legislators, staff, public. Speaking for myself. We've got a real problem here tonight. We've really bitten the bullet. The Administration has given (IA) I'm not here to recommend you approve it or recommend you disapprove it. I'm here to recommend you find out something before you take any action. You have not got any adequate information. I don't think you have correct legal information, for instance AS 38-95.060 limits you to a one township exchange, limits you to

equal value and makes no reference to minerals. If you don't change the entire law, either appeal that one or enact a new one or amend that one, or do something, I think you're going to be very susceptible to a law suit over this action, over the action proposed by the Administration should... If you want to do that, fine. You should do it. But the main thing that bothers me about this is a lack of information. You've heard testimony from experts and I am not an expert. You've heard experts testify tonight on the value of the resources that would be exchanged on both sides. What hasn't been dealt with is, what are we talking about when we say value. We're talking about economic value, talking about recreational value, aesthetic values, what are we talking about? There's been no definition of those terms. That is where you are somewhat in the position of a jury in the condemnation case. When I say that the land the Highway Department took worth ten thousand dollars and the Highway Department says it's worth ten dollars, you know the jury has to reach the verdict there as to what that land is worth. What did I deprived of and that's your unenviable position. And I do not envy you for that. There's no definition of value. I don't think the straight economic value is right, I don't think it can be entirely disregarded. I don't know what the coal in Beluga is worth or the coal which apparently's been overlooked to a large extent. And the coal in the Kenai Peninsula and the other lands that are purported to be part of this exchange. I have no idea what they're worth. I have no idea how to find out. If you'll tell me what the Arabs are going to do with oil prices or what the Federal Government is going to do with oil prices, then I could tell you what coal might be worth. But I don't know the answers to that. I deplore the Administration's, despite their protestations to the contrary, keeping the details of this thing confidential for so long. Now the Legislature has got something like three weeks or four weeks to try to make their own independent determination. You've already heard the conflicts to the Department of Natural Resources itself and other qualified mining engineers and geologist over the value of this. It is not clear cut. If you buy the Dept. of Natural Resources position of what this is, you are commiting an error which is going to approach Teapot Dome someday. And I don't think the Legislature wants to. The Administration may want to. Now, I know, as you all do, that despite some baloney that came out of Juneau and other places recently, the revenues from the subsurface resources and timber resources, 70% of them are spread around all regional corporations. You don't even have to be a member of the corporations to share them. Likewise, if I had a lodge on a lake, I would not want a profit making corporation own the land in the area because I'd have competition. Consider that. The history of this transaction from a secrecy standpoint has been sickening. Two things have been done wrong. Because the State law requires under criminal penalty that records be made available to the public, simply a private file is kept so that nobody. including the Legislature, had the opportunity to find out what is going on. There's another Legislative Act which you have - I'm not going to give you the citations here, I'm sure the attorney knows about all of this. It says that all meetings of agencies shall be public with certain specified exceptions which these type of meetings didn't fall under. I happen to think a meeting with the Div. of Lands, with Cook Inlet Region and the U.S. Dept. of Interior is an agency meeting. I came within one fourth of an inch of signing a criminal complaint against the State's negotiator on this. He was perfectly willing to file against somebody else who got trapped by conflicting orders of various State agencies. I suggest you take a hard look at this. You have not been given the facts. Despite what they say, this has been the most secret game played right up to the last minute until they decided

to have a deal and wanted (IA) Therefore, you're at a terrible handicap right now trying to get the facts. What you should get is some independent appraisals of the values. And I don't mean from somebody with an ax to grind on either side. I mean an independent appraisal. And I don't know whether how an independent appraisor could consider the recreational value and the subsurface values at the same time. That's beyond me. But it should be considered if you don't want to go down as a Teapot Dome legislation. And if you could get that information before you move, I think you'd be a lot better off and you could defend your position. Thank you.

Sen. Poland: Representative Hershberger?

Rep. Hershberger: Mr. Burrell, maybe you could tell us, are the indians trying to stop us or are we trying to shoot them? If this is collusion, which are the bad guys? Mr. Huhndorf? Who is it?

Burrell: I don't know.

Rep. Hershberger: Who's playing the game to what advantage?

Burrell: I would say this...

Rep. Hershberger: I mean, I know why your remarks are stated as they are. We all recommend political values and all that, but you tell us what's wrong here now?

Burrell: Alright, I'd be happy to. Madam Chairman and strike the (IA) remarks. Obviously both sides, I think, think they have something to gain or they wouldn't make the deal. Actually, all three sides think they're either gaining or at least not losing or they wouldn't make the deal. That's a typically negotiated transaction. Right? Okay, I'm speaking, not asking. I beg your pardon. Everybody thinks they're either going to gain or at least not going to lose or they wouldn't enter into the transaction. Okay. Now, the only thing you can assume from that is that they have different motives, different objectives. And I suggest, the State objectives are different from those of the Cook Inlet region and different from the United States Department of Interior. Everbody has different objectives and they're all happy with them apparently. When I say the State, I mean the State Administration.

Rep. Hershberger: It's pretty obvious that the Stat has done something with the region natives that they don't know about so would you go to the natives and tell them to be on their guard or are you telling us to tell them to be on their guard?

Burrell: Madam Chairman, I am not saying that the State is doing some thing the natives do not know about. I said the State had different objectives than the natives have and apparently both groups in this case, let's leave the Dept. of Interior and the Federal Government out of it. In each case, both groups were satisfied with the objectives and thought their objectives were attained. Like I might want your red card and you might want my blue card and to both be happy, we make a trade because you like red and I like blue or whatever.

Rep. Hershberger: (IA) I'm confused then. If both parties are in agreement,

what's this (IA)? You said somebody's trying to take advantage of someone else so presumably...

Burrell: Madam Chairman, my remarks were the fact that I think you ought to get an appraisal. That's all. You can't buy something that's just been fed to you, sp[illegible] fed. You're going to have to live with what you do. If you, quote "give aw[illegible] - and I don't mean it that way, but if you give away the Beluga coal reserves and [illegible]e Kenai Peninsula coal reserves or various park land, that may or may not be right. I'm not saying it's wrong, I'm saying you've got to know. And I don't think you know. There's obviously controversy within the Department of Natural Resources itself, you've heard the controversy over parks and values, or differing interpretations of the values from various people who've testified. And I don't necessarily say either one is right or wrong, I'm saying you ought to find out. I guess that's why we're all here.

Sen. Poland: Representative Rhode.

Rep. Rhode: Where would one go to find out what the recreational value of these lakes are? Just where would we go to find this out and tie this in to the value of the coal field?

Burrell: Madam Chairman, that's the, in reference to Rep. (IA), that is a value judgement and that is why I made my previous remarks, that you're sitting here as a jury. I don't know what a recreational site or a recreational use of it were...

Rep. Rhode: Who would know that we could go to?

Burrell: I think you have to get the testimony as to the economic value of both. Many of you have to throw in your own evaluation of its recreational or renewable resource value and determine what you are gaining and make your own evaluation.

: May I make one remark here.

Sen. Poland: Senator ?

: If you would tell who (IA). I don't know where you go to get an evaluation until after say twenty years from now, we find out who gained and who didn't.

Burrell: Madam Chairman, I'd hate to wait twenty years to found that out. I'd like to find out before. But I'm for (IA) find out.

: Madam Chairman, I have to agree completely. I don't know where to go to find out either. But what I would say is this, what is the St[illegible]e losing from a control standpoint in giving up ownership of the Lake Clark area. I don't know. I haven't seen anything in writing that explains to me what the State is losing. As far as I know, we have not lost our management control over Fish & Game although we might lose it over the habitat for the fish and game. (IA) I appreciate that. All I'm suggesting is that we just don't have enough facts on what is the State giving up and what is the State gaining in both areas, say Lake Clark for instance, and Beluga. I don't know.

Sen. Poland: Representative Brown.

Rep. Brown: (IA) Rep. Cotten is (IA) is not mentioning anything that (IA) already passed last year.

: (IA) designated smoking area.

Rep. Brown : Designated smoking area. Just one comment. You talked about whether or not negotiations were carried on privately and the way in which things were done and this doesn't directly relate to that but (IA) you just might be interested in the fact that Rep. Cotten and I were sitting in the House Judiciary Committee (IA)

tape 8

: (IA)

Sen. Poland: We said if we couldn't finish that there would be (IA) we didn't want to lock ourselves in because we would certainly like to finish, in fact we figured if we were almost through by 9:00 we would ask the people to stay (IA) because some of our legislators are unable to get reservations on the plane tomorrow and they will have to leave on the morning plane. Bob Rude.

Rude: Madam Chairman and Legislators, my name is Bob Rude, I am a stockbroker in the Cook Inlet region and I am the First Vice-President of the Cook Inlet region, President and General Manager of the Cook Inlet General Property Corporation and am a member of the Cook Inlet Region Land Negotiation Committee. I have been a resident of Anchorage for 35 years and I am here today to testify in favor of the proposed land trade. I believe the land trade is something that is beneficial to all three parties. The proposed land trade provides for the settlement of certain claims and in doing so it consolidates ownership among the United States Government, the Cook Inlet Region and the State of Alaska within the Cook Inlet area of Alaska. The proposed land trade facilitates land management and creates land ownership patterns which encourage settlement and development in appropriate area. The proposed land trade will enhance the State of Alaska's land holdings by 48.8 to 53 additional townships of land. The proposed land trade makes available Point Campbell, Point Woronzof, and Campbell Field to the State of Alaska. The land trade protects wildlife and fishing resources of the State of Alaska. The land trade provides areas for future recreation of the Anchorage residents and the residents of the State. As a member of the Cook Inlet Region's Land Negotiating Committee, I have been involved in with Cook Inlet Region's land problems for three years. In 1972 and 1973, I was on the first land negotiation committee of Cook Inlet Region. Our committee met many times with the Federal Government. We made many trips to Washington, D. C. and spent thousands of dollars only to see negotiations fall apart. A full year went by before negotiations were resumed and it was at this time that the State of Alaska, the Federal Government and the Cook Inlet Region began to negotiate. These negotiations resulted in our present land trade that is now before you. Throughout our negotiations with the State of Alaska and the Federal Government, Cook Inlet Region has made many concessions. We gave up our rights to Campbell Field, Goose Lake Point, Voronsoff and Point Campbell, to appease the residents of Anchorage. We gave up our rights to the Swanson oil fields to appease the State of Alaska. We

dropped our claims to National Forest lands and reduced our claims to Moose range land to appease the Federal Government. We saw the State of Alaska and the Federal Government transfer 17 townships of land during the land freeze that could have come to us. We relinquised the right offered us on Beluga Mental Health lands. This area was supposed to contain 80 percent of the estimated coal resources first offered to us. We agreed to accept approximately (?) townships out of our region so that the State and Federal Government could retain more land within the Cook Inlet Gulf. In doing this, we will again have to spend millions of dollars to study the land in five other regions, so that we can select the land most suitable for our corporation. I have attended several hearings concerning our land trade and have heard adverse testimony by many non-natives, the testimony that I have heard makes me sad. Some individuals feel the only lands we are entitled to are mountains and glaciers and that any land with any value should be kept from us Natives. Are the people aware that the Natives lived on and occupied all of the lowland, low-lying land in this area? Are you aware of the fact that we agreed to a land claims bill that specified that we could receive land of similar character as the lands we gave up in the Act? Are the people aware of the fact that if this trade is not approve, there will be no land planning in this area? Are the people aware that if this trade does not materialize, that Cook Inlet Region will progess in its court case and will file and fight for every piece of land possible in this area? In conclusion, I feel that Cook Inlet Region has paid its price. The Cook Inlet Region (IA) and the lands listed within CL 94-204, I believe it will greatly benefit the State of Alaska and the community of Anchorage. It is my belief that Cook Inlet Region will move to develop the land in the Beluga area and this development will bring additional income in the form of taxes to the State of Alaska. Millions of dollars will be made available to the Anchorage community and many jobs will become available. I believe it would be a very embarrassing situation if the State Legislature fails to approve this land trade. This land trade has been supported by the Federal Government, the State Administration, State Congressional Delegation, and conservation groups in the Cook Inlet Region. CL 94-204 was overwhelmingly passed by the Congress of the United States. For the State Legislature to (IA) the trade now would show the Nation and the world that this State does not have the concern of the rights of its first citizens. I hope you will seriously consider our views and I hope you will support the proposed land trade when it comes up for a vote in Juneau. Thank you.

Sen. Poland: Thank you Mr. Rude. Representative Cotton?

Rep. Cotton: Mr. Rude, you mentioned that you had given up your claim to several areas of land around Anchorage here that were considered by some to be uh-anyway Anchorage wanted them and so you gave them up to appease the Anchorage area. Are there any other lands left in that same category that were either asked for or that can be considered similar lands that you haven't given up?

Rude: No, what I was referring in this statement --like I mentioned I was on the first negotiating committee. Federal Government came into Anchorage and with a team of negotiators at that time these were the areas that they brought up and said that the changes there and the final offer was something like 23 townships of land that we would give up our title on 48 townships.

Rep. Cotton: (IA) Campbell Point, Campbell Air Strip that you mentioned you gave up your claim to in order to appease Anchorage. Were these the only areas that Anchorage asked you to give up in order to appease them?

Rude: Yes, to my recollection.

Rep. Cotton: Well now, this is just Cook Inlet Region, that doesn't include any of the other corporation, isn't that correct? You don't have anything to do with any other village corporation within that region?

Rude: No, I don't.

Cotton: Thank you.

Sen. Poland: Representative Brown.

Rep. Brown: The tone of your testimony concerns me. I hope you understand that there is no great negative feeling for the Cook Inlet Region Corporation, not that I know of. It bothers me very much that you seem to think the people would threaten or appear to threaten to lower the boom on your efforts. I want you to feel that your birthright as a people. That's not what is happening at all. My concern and the concern of many of the others of the group is the whole process. There is something wrong with the process. Probably (IA) hindsight and some of us have only been in the Legislature a year or so and some of us a long time, we see these (IA) differently but you have heard no doubt, that the dispute (IA) the representative administration (IA) legislation involved in a very important decision (IA) and I think it is that process that really (IA) as opposed to the particular issue in question or merits of the particular Act (IA) it was represented here that I and other members of the council have (IA) if that is ture I certainly don't remember (IA) certainly it was not presented in a way (IA) we found later the (IA) the State of Alaska that we found out that we would likely be coming back to Juneau and it was at the beginning of the session that we found out this had all taken place (IA) and it occurred with a shouting of the press and were drawn into the action (IA) through the process of the issue (IA) legislation make sure that the administration's feeling on the disposal of a, or trading large lots of land or resources in the State of Alaska (IA) I don't know (IA) the distribution if possible. Maybe this Governor or some other Governor (IA) a different feeling (IA) we could have some serious problems. All of those concerns are not directed at you or at the Cook Inlet Region (IA) you know we come to a legislative council meeting and we get work, formally or infonmally, on and off the record that vital decisions (IA) without any input from the Legislature at all. (IA) I don't think that it was anything directed in a negative fashion. That's all I have, thank you.

Sen. Poland: Are there any other questions of Mr. Rude? Thank you very much, Mr. Rude. Patrick Pourchot, of Knik, Knoers & Kyahers, Inc.

Jeff Knaebel: Senator Poland and members, I am Jeff Knaebel, a resident of Fairbanks, I am a member of an engineering and geological consulting firm with head offices in Fairbanks, Anchorage, and Ketchikan, and which numbers among its clients, more than two dozen mining and construction companies to whom we have provided engineering and geologic service. Cook Inlet Region is among my firm's clients. I am not however, testifying on behalf of any of my clients nor on behalf of my firm, but as a citizen of Alaska, on my own behalf. First, I think it is important to bear in mind that the purpose of the proposed trade

is to complete in an orderly manner, the implementation of the Alaska Native Claims Settlement Act, which was an Act for the purpose of settling aboriginal land claims, that has behind it the full moral weight of the Congress of the United States, and also citizens of the United States. It is also important to remember that when you talk about the Native people of Alaska, it is not a "them and us" situation. These people are Alaskan citizens. They are the first citizens of this great land, they and we share a common bond of Alaskan citizenship. They are us, in other words. When we propose to deed land to the Native ownership, we are giving ourselves land. I doubt that there are many Alaskans who would not rather have us own our own land than the Federal Government own our land. And this trade offers a net gain (IA) ownership and a net gain of State and title land. State government has seen fit to provide to private ownership only 3/10 of 1 percent of Alaska's land. The citizens of this State desparately need land. Land to live on, and to earn a livelihood on. Private productive land ownership is a corner stone of individual liberty and free enterprise, two things which are sadly rapidly slipping from our grasp. The Alaska Native Claims Settlement Act, in my opinion, is the single Act in support of individual liberties in decades. The land trade in force today goes a long ways toward meeting the needs of the citizens of this State. Aside from the direct land benefits to Alaska citizens I will enumerate shortly, there is a moral issue to be decided here. In the past four years I have witnessed treatment of Cook Inlet Region at the hands of our Federal Government that is so shabby that it would make Americans hang their heads in shame. It grieves me that a law enacted by the people of the United States assembled in Congress can be so blatantly abused by the Federal Government charged with the implementation of the law of the land. I have seen glaciers and mountains withdrawn from the Cook Inlet Region, and have seen good faith on and an attempt in taking corrective action met with hypocrisy, deceit and broken promises. The State also has a moral obligation to redress the wrong done to these, its first citizens, when the State entered a secretly negotiated contract with the Federal Government in September 1972, which took away lands in the Lake Tulatin area which should properly have been made available for Cook Inlet selection. Incidentially, the dedication of that contract is still pending and can be settled by the agreement before us today. I think it is time for these things to be put behind us. Since 1972, all attemps to have the Alaska Claims Settlement Act properly implemented for Cook Inlet Region have failed except for the proposed agreement before us today, and this agreement contains good faith compromises made by Cook Inlet in recognition of the interests of the State of Alaska, because of 1975 sympathy for Cook Inlet Region by the U. S. Congress resulted in committments that would have given Cook Inlet certain trade lands including Swamp River plus Campbell Air Strip, Point Uronsoff, Point Kanby and other areas that were in negotiation at the time. When the State of Alaska became actively interested, Cook Inlet agreed to discuss issues in good faith negotiations which ensued between the three parties for over eight months. From my own contact with people, it appears to me that most Alaskans knowledgable of the details feel that the agreement before us is in the best interests of all the parties. Except for objections centering on the Beluga coal issue and the method by which the agreement was negotiated. It is my opinion that many of the figures quoted in the newspapers on this Beluga matter are misleading. First, those figures are based on trends of mental health land in trading. Mental health land has subsequently been removed from the trade, thereby moving 75 percent of the reserves that are being argued about. Second, the figures quoted in the newspapers are based on reserves calculated to the depth of 2000 feet. It is unlikely that mining will progress to that depth in the forseeable future. Coal reserve figures are meaningful only if they are reserves that can be economically mined. It is needed by people

of the greater Anchorage area, and add to the local borough tax base. The State is reimbursed with other potential resource lands. The title cloud on all lands in the Cook Inlet region is removed. Cook Inlet withdraws blanket filings and draws its lawsuit. The State-Federal agreement of September 1972, remains intact. This agreement protects that area to selectable and selective State lands, a large portion of which could go to Cook Inlet should Cook Inlet win it's law suit. Cook Inlet has given up its right as you have heard other people say, on the majority of the Moose Range, Campbell Air Strip, Point Woronsoff, Point McKinsey, the Lake Tulatin land and 30 townships within the region of the lake park area and Talketna mountain area plus Cook Inlet has given up 46,000 acres of its total legal entitlement under the Alaska Native Claims Settlement Act. I think that Cook Inlet has conducted itself in an exemplary manner, that the Alaska Native Claims Settlement Act guaranteed a just settlement, that this particular trade before us, is just and as well brings a net increase in value to the State in the particular situation that we face. I ask you to analyze those portions of public law 94-204, which apply to Cook Inlet alone. Other issues in that law may be controversial but they do not apply to the Cook Inlet Land trade and should not be considered in [illegible]ing the agreement before us today. It is time that this issue should be settled. It is time for the Government of our State and Nation to uphold the laws of this land as those governments expect the citizens to do. Thank you.

Sen. Poland: Do you have any questions of Mr. Knaebel? I would like to make a statement here. Your remarks seem to place the burden on the State, and in that I think you are being as unfair as you accuse the State of being. I don't think there is anyone here that hasn't supported the Alaska Native Land Claims Settlement Act, nor do I sense in any of our members and there may be a few whose feelings I don't know, I can't speak for all 60 , that don't have the decent concurrence, but let's not lose site of the fact that the original agreement was with the Federal Government, and Cook Inlet and the other regions. I could not agreee with you more, that Cook Inlet was offered something that was completely unsatisfactory, on the other hand, the Federal Government also has an obligation to see that Cook Inlet receives its proper entitlement. I hate to see them give up 46,000 acres. I think they should get their full entitlement. but I think you're twisting things a little bit to say that the State is this involved.

Knaebel: It was not my intention to imput any blame to the State. I do think that there are moral issues involved there that the State, whether they like it or not, is placed in a position of making the final decision, and that the State, in my own opinion, did clearly do a wrong thing in that the previous administration did set down with the Federal Government and gave away Lake ? land to the Feds and to itself that properly under the standard of the Act, should have been withdrawn for Cook Inlet region, and had they been withdrawn for Cook Inlet region, there is a distinct chance that this whole thing might never have come to pass, because there might not have been a legal basis for Cook Inlet's complaint. To that extent, I feel that the past administration of the State is involved and to that extent I think there is a moral issue that relates directly to the State as well as the uninvited moral issue that has

significantly (IA)
like Federal reserves that have little chance of being mined in the forseeable future. Return to Cook Inlet, or loss to the State of Alaska is related not to the total reserves in the ground, but to the rate and time which they are mined. THe largest coal mine in the United States according to a state report, produced about 7 million tons per year. The question then becomes when will production start on the Caps ground which is the coal that Cook Inlet would now get in the agreement. The Chitna coal is closer to tidewater and has an estimated 1.6 billion tons of coal. This coal will in all probability, be mined first. At a production rate of 7 million tons per year, it will be 228 years before Chitna is mined out and it would be logical in terms of the Caps. The present value of the Caps ground is nearly zero. On the other hand, let's just suppose hypothetically the Cap was mined first. There is certainly value in lease rental and production royalties. The cap has about 50 million tons of coal, sufficient to operate a mine of seven million tons per year for 79 years. Present value of royalties calculated by State engineers are for a mine of 6 million tons a year and calculated between 3.7 and 6.5 million. A probable scenerio for the Cap might be that mining starts and progresses for 20 to 50 years. Since the Chitna is closer and both areas will be under lease to the same party on the assumption that both areas remain in State hands, the low cost coal in Chitna would be gone 50 years from now and the Cap would then be opened up. The present value of Caps then are lease payments through the years, plus royalties after 20 years. This totals up to a series of figures which, including the lease payments and royalties and the value of the coal itself brings the total present value of the Caps to about two million, seven hundred eighty seven thousand dollars ($2,787,000) rather than several billion dollars. In summary, regarding the Beluga, Cook Inlet has received 13.5 townships. This excludes 75 percent of the known coal. 1.6 billion tons of known coal remain to the State. Cook Inlet gets 570 million tons of known coal, 850 million tons of hypothetical coal. The State estimates royalties to Cook Inlet at 15 million dollars on the 570 millon tons of known coal in the Cap. Since however, Chitna would probably be mined first, the present value of the Caps, the value of future income discounting the present is 3 million for land. Therefore, what we have here is the State giving up very hypothetical future coal income of very uncertain value in exchange for high present value of land exemplified by Campbell Air Strip, Swanson River revenue and other Federal excess properties. In summary, the net effect of the whole trade agreement appears to be as follows. The State gets high valued Federal excess property near Anchorage that might otherwise go to Cook Inlet. The State oil revenues from Swanson River are protected for the State. Cook Inlet gets some resource land that would otherwise be locked up by the Federal Government and not used for the economic benefit of Alaska. Contrary to what has been said earlier, the out-of-regions selected do not cost the State. There is enough (IA) land and land available (IA) to more than meet the State's entitlement, and in addition to that, the effect of this Act and this trade is to increase the final total State title, over and above the Statehood Act by approximately 30 townships. It appears to me that the potential gain of 30 extra townships of State ownership has a good chance of exceeding the potential loss from the production of coal reserves of questionable value. Also, approximately 19.7 townships of State land are transferred to private ownership. These lands are

been dropped into the State's lap, but I surely did not mean to impune any tendancy on the part of the State or you folks to rule against Cook Inlet, per se, I simply wanted to bring out these points.

Sen. Poland: Did you help Cook Inlet select this particular range that they selected?

Knaebel: We advised them on technical matters relating to land and have helped them to decided the priority of the lands that were available up to this time for selection.

Sen. Poland: Are there any further questions of Mr. Knaebel?

Rep. Brown: Madam Chairman?

Sen. Poland: Brown.

Rep. Brown: I am interested in the computation that has been made in regard to the comparison of various coal lands and I am sure that other people here will be testifying and variously agreeing and disagreeing with what you have to say and because that is true and because the issue falls back to Juneau, and we'll be looking at those same figures again, I am wondering if it would be possible for you to have that portion of your remarks or that summary typed up and sent to the committee.

Knaebel: Yes sir. We can not only do that but we can show you the basis of how we arrived at that figure. I might point out that to the engineers here that probably the most common point of disagreement is going to be the assignment of a probability function as to whether or not a given unit of coal is going to be economically mineable by a certain point in time. We have taken the State's report and we think they are basically right and have taken a somewhat more conservative view point on what are true economic reserves that can be mined at a profit.

Brown: I am sure that those who agrree with you would like to have that material in support the argument and the disagreeing people would like to have it (IA) to try to shoot it down.

Sen. Poland: Thank you very much. Mr. Chuck Hawley.

Hawley: I am C. C. Hawley, the local mining geologist, I am president of the local chapter of the Alaska Mining Association.
We don't feel that we can take a negative position on this for two main reasons, one the complexity of the thing, and we have only just been able to get the facts and then we have conflict of interest too. For one thing, the mining companies are members of the Cook Inlet Native Association and members of the Alaska Mining Association and we have had difficulty in getting all the facts. It doesn't appear the proper course to advocate a position. I think we will,..... there are

several things that we need to talk about and some of them haven't been brought up at all. Several things. First thing would be the trade off in volume mineral values are not easily assessible, but they probably should not be an overriding factor. And there are two considerations that lead to that.
Blank tape.

Hawley: Are not appreciably different.. The second point is that some of the land which the State now can select has been demonstrated by the efforts of Cook Inlet Region to be mineralized. This was done on their behalf by contract mineral companies and this land would formerly have been in D-2 status, this land that they thought they could select and they made the expenditures to go out and prospect it and determined that it was, in fact, mineralized. This land that you can't put a value on it, but in other words, the State may be giving up some things that they're getting mineral values in return. Another related factor is that the major and perhaps only mineable coal in the Beluga area is that that remains in State ownership. I know pretty much what company reserves figures are in the Beluga fields and that they do not exceed the figures brought out by the State or just introduced in testimony; in fact, they're appreciably less than this. This is coal that can be mined in a reasonable future, say the next 25 to 50 years. Okay, so as far as mineral, I think this has been over quite a few, to a large extent. A point that the committee, or legislative action might address, the State will receive land in this trade and these, the trade would obviously be more effected by the mining industry if we can be assured, or, not assured, but, if we can have some assurance that we would be able to prospect on this land. In other words. the land that the State is now getting trade in the Illiamna area, Kamishak Bay area and the Talkeetna Mountain area; some of this probably will end up as parks, say the Kamishak Bay area, the other bear protection area and the salmon area; but it also has high mineral potential. And so, we would feel that the lands that are returned to State selection, many of them should be open to mineral (IA). So, that's a point that I don't think has been brought up.
The most serious problem involved in the trade, that I can see, involves a change of D1 and D2 lands, specifically in the Lake Clark area.
The, and this is one area that's not treated in the economic evaluation of the State, in other words, the State has tried to look for trade offs in the paper that they've prepared; but the State, in the provisions of the government, had given up the right to select anything in this Lake Clark area which is about 30 townships. And, it further has agreed that this land would go into national parks status, not perhaps national parks, but it will be under national park management. We have further agreed that certain lands inthe Kenai Moose Range will not be automatically, that the Secretary of the Cook Inlet Native Association, will encourage their placement in the growing system. In other words, this land is getting the D2 type legislation, they're prejudicing they're already trying to make decent settlements. The land in the Lake Clark area includes a (IA) which has been billed and the value ... the only (IA) official number that can be estimated (IA) is open file publication of about three or four years ago, the value (IA) ... results in excess of 200 million

dollars. This land would go into national parks and, in effect, constitute a taking because there's no way you can mine a national park or a national park recreation area regardless of what the park service says will happen. This has been pretty much provided in Glacier Bay and if you give it to a national park, you've lost it. I think maybe this whole trade has gone so far that this particular item cannot be remedied but we see similar problems in the southern part of the Brooks Range where the State selected mineral land in the Mt. McKinley area where State-Fedreal trades were involved that the legislature should look closely to what lands the State is going to trade back to the Federal government. The national park service never gives up. They're the most effective group I've ever seen as far as land acquisition and they'll get you every possible way. Maybe some people think that's highly desireable but, I think giving of known mineral land is something that's really questionable; especially since there's no compensation mechanism that really appears to work. Okay, kind of emotional or something like that. But I would like to talk a little bit about taxation and revenue since this was yesterday and this 10 percent royalty provision was negotiated at a time when coal values were low. I think that you also need to put yourself in the position of (IA) at about this time. At the time that they started to pick up coal lands, there was no good coal potential anywhere in the United States. The people had pretty much given up on coal -- you couldn't sell acreages in that area. They felt that here was an area where they could acquire coal which was not economical and by putting in a liquification plant upgrade that coal to the extent that it was economical. Now, events subsequent to that have probably made this coal economical and feasible, but that wasn't their initial plan and they acquired this ground in, they were going to convert it artifically to, say, an environmentally clean product. And, so, when you look at revenues, it's sometimes forgotten that the total revenue to the State isn't just a royaly --it's the State income tax, all the indirect benefits to the State and, in contradiction to what other people have said today, we do have a settlement tax, it's a 7 percent on the net tax, and it would exist on properties and would give a return to the State just as much as if it were to say, remain in State ownership. So, a lot of you people maybe should have been in the tax business anyway. I couldn't resist the chance to get a little plug in there.

One other further danger that I can see in things that are happening in the State is the tendancy for the, I don't know how to say it exactly, but the political, anyway, making the geological survey of the State into a political body. Now, I don't say that this is happening in this case, but the State administration has asked the State geological survey to come up with a document which justifies this trade and they asked them to do after the fact that the trade has been arranged. And I think that's extremely bad and even though I agree with the things in here, the fact that you're asking technical people to get into the political arena is very, very dangerous. It didn't happen in previous administrations because the Commissioner of Natural Resources knew something about resources. It happens here because, they have to go back down the staff to find out anything about natural resources.

(IA)

Well, the previous administration (IA) a minute ago, but they were trying

to acquire economic value for the citizens of the State of Alaska. Maybe they made some mistakes ... Thank you very much.

Sen. Poland: Thank you Mr. Hawley. Representative Brown.

Brown: I'm going to yield to (IA) first because I keep looking like I'm putting my hand up here all the time. Am I the only one asking questions?

Sen. Poland: You can just talk for all of us.

Rep. Brown: One of the things he talked about was a matter involving concern over this 10 percent royalty and I didn't really understand what it was that you were talking about or what it was you were worried (IA) or somebody.....

Hawley: Well,

Rep. Brown: Let me finish my comments and question --and that is, the State, my impression is you can't go ahead and change the royalty on coal that has already been granted and those in Cook Inlet, they may well be re-negotiating but they'll be re-negotiating on the basis of a business decision. The other party probably won't want it if (IA) negotiate (IA) lots of money for the operation. So, what is the danger and the worry here (IA) concerned about?

Hawley: Okay. The danger that I heard today is that people here say " oh boy, coal has just gone from $5 a ton to $20 a ton -- there's really going to be a tremendous windfall profit that people can tax." I think you need to look carefully at that. The State can increase their royalties, it does have the potential at any time to increase, say to raise the net tax or other tax provisions for gaining revenue.

Rep. Brown: (IA) there's a royalty and then there's a tax.

Hawley: Okay, but there's still (IA) the State. It's sort of a technical question but it still comes out as profit, a piece of the pie and you can only cut it so small. Well, this thing is happening on oil legislation right now. They want to increase the (IA). They can increase the royalty (IA) little bit tricky right at the moment. But, don't assume that these people are going to make a tremendous windfall profit. If it goes to a liquification plan, about three or four years ago it was estimated that a plant like this would cost a hundred million dollars and no one had ever built one then; so, I think you're looking at capital costs of one to two hundred million dollars that they need to get back before you start worrying about trying to tax any excess profits. That's what I'm getting at. There's a tendancy to think that people in the resource industry are making .....

(tape nine)

Hawley: ... extract resources other than oil and gas, some specific industries of the entire century so far has been a net loss. (IA)

Sen. Poland: Are there any other further questions of Mr. Hawley? Thank you very much. Stewart Ramstad?

Sen. Poland: Cecil Barnes? And William Johnson has submitted written testimony to the committee and will not appear. Dr. Douglas Stark?

Stark: My name is Douglas Stark and I live in Anchorage. I want to say that I appreciate your committee being here and holding the exhaustive hearing on stoppages hearing this morning in Palmer. I have no personal ax to grind. I could stay home and trust that you will recommend approval of the agreement but I know that there is opposition for various reasons and a Legislative body such as yours can't help but think that maybe the testimony here is in fact representative of the constituents. So I figure it is desirable for citizens to testify. (IA) background of this issue. The Native Claims Settlement Act provides that the Cook Inlet region has a right to a certain amount of land because private parties in the State have already selected the best land for themselves. We have a problem in the regional (IA) court. Settlement Act provides a very rigid formula for land distribution but since there was a problem in this area, the State, the region and the feds sat down and negiotiated an agreement. This, in itself, is commendable because all factors can be taken into account (IA) this rigid statewide guidelines. (IA) which reads: "which was not to the benefit of one and the detriment of another but which would benefit all parties." In earlier stages of negotiations various issues were raised as to what the region wide did. During these negotiations, the region gave up the following claims: number one, the Swanson River oil fields; number two, the Campbell Airstrip, Point Campbell and Point Woronzof Tract; number three, the Beluga mental health coal lands. During the negotiations the State held public hearings on the trade. We may not agree with the region's position. We may not agree with the State's position. We may not agree with the federal position. But in a complex issue such as this, there is bound to be at least one bid from key cities, persons confined in this view. In other words, we have to take the whole thing as a package. This complex issue contains many safeguards for the various parties such as restrictions on the sale and restrictions on manner of use. And the State appears to gain 700,000 acres more from the Federal Government than it gives up to the region. In addition, the State gets the Campbell Airstrip, the Campbell Point, Point Woronzof Tracts. A lot of side issues have been brought up. Somebody that (IA) such as the Legislature versus the Administration. As far as care of the land and proper development, based on what I've observed, the land would be best off in the region's hands. In the final analysis we have to examine the alternatives to this agreement and what would happen if it were rejected. Another agreement would involve having to go back to Congress. The various staff who have devoted a substantial amount of effort to this issue, the State in particular, has many other things to do with its limited personnel, sources beside rehashing this issue. I doubt that at this moment, consideration would substantially improve the agreement. I think that it would be similar to the union that rejects an agreement, strikes for three more months and then accepts the same offer that it was originally offered. I think the agreement is a good one and the rejection of it is unwise and I urge your approval of it.

Sen. Poland: Thank you Dr. Stark and Representative ?

Rep. : What is your profession?

Stark: I'm a consultant in management engineering and planning.

: Private?

Stark: Private practice.

: Thank you.

Sen. Poland: Representative Brown.

Rep. Brown: I only have one comment. You said there were some side issues that created muddy waters such as problem of the Legislature with (IA). As far as I'm concerned, I think that side issue is not a side issue. I also would (IA) I think it would have (IA) democrat, republicans or (IA) the legislature (IA) same thing. And it demonstrates a major problem, as people have testified and pointed out, we don't have procedures (IA) we should have. So that this kind of thing has been going on for (IA) So I would strongly disagree with that portion of your testimony. That's all I have to say.

Stark: Well, on that I think we all agree that that's an issue, whether it's a side issue or a prime issue, to some extent it is subsidary to the main issue which is the agreement itself. If the agreement is a good agreement for the State, is a good agreement for the region, a good agreement for the Federal Government, if the alternatives to approval are very negative, then the question is, what is the subsequent issue which is the agreement and if there are some problems at the way in which it was arrived at, then we'll see that it doesn't happen again.

Rep. Brown: But, you know, you really kind of work like you're disaproving the actions of these committes and legislative council and say someone raised a side issue to muddy the water as though there was some kind of criminal intent on the members of the legislative council who asked that the subcommittee involving Senator poland, Senator Rader and some of the others look into that, (IA) I don't think there's any kind of intent. I just wanted to call or question your use of the word. Maybe you didn't intend that that was the case.

Stark: No I didn't.

Sen. Poland: Are there any other questions of (IA)? Dr. Stark, thank you very much. John Baxandall? (IA) speak to us? I guess he's not here. Alec Sisson? Doris Clark? Andrew Camkoff?

Camkoff: My name is Andy Camkoff. I'm a stockholder in Cook Inlet Region. I'm also the General Manager for the Knik Village Corporation, the Alexander Creek Native Association and have been into the particular thing of the land trade quite extensively in the last few months. And in behalf of Knik-Knik stockholders, we have gone through quite an awful lot of additional work in achieving and selecting the entitlement lands that the two village corporations were entitled

to under the Act. We have looked into this trade quite extensively in behalf of our own particular demand problems in and around the Knik and Alexander village port townships prior to the negotiations and the outcome of the tri-party agreement. Knik and Alexander have been burdened with selecting lands in far-off locations such as Lake Clark, Talkeetna Mountains, west side Cook Inlet and only by the means and the outcome of Cook Inlet, State of Alaska and the Department of Interior land trades have the means to particular villages have arrived at any lands close and near to their villages' area. We highly support the trade. We welcome the opportunity to settle the land problems that the village corporations are faced with. The land trade has brought about an awful lot of additional work to corporations (IA) village. An awful lot of additional expenses. We feel that the land trade not only benefits Cook Inlet but also that of the village corporations that are involved that were forced into selecting deficiency lands in the Lake Clark area, the lower west side Cook Inlet. We had mixed emotions about identifying and selecting those lands that were set aside by the Secretary. Consequently we had no choice but to select them (IA) Cook Inlet, Lake Clark. We would have, and if this trade does not follow through with approval, these corporations would be burdened quite heavily in the future with a management problem. Even though we will have lands (IA) we are still going to be land holders in the lower Cook Inlet and geographical problems in consolidation with (IA) lands in the lower Cook Inlet and far-off places. But through the means of the land trade, we're very happy with this and we highly support it and we highly support and appreciate the efforts that have been extended and the time and dollars and efforts of Cook Inlet and the State and also the Department of the Interior. I know that - I don't think any of us have come and testified that this has directly affected this and my intentions were to come before you and present our faces and values and our understanding and that we do support it. But I...thank you.

Sen. Poland: Mr. Camkoff, when I talked to you earlier today, I told you that (IA) that I would like you to confirm that this trade also takes care of the Montana (IA) problem.

CamkoffL Yes. Montana and Caswell group, these two organizations and corporations are not village corporations, have been brought out and brought into the binding documents as to the extent that they are affected. They have been working with the Cook Inlet Region, they have these agreements and understandings of their problems. They too were - faces a lot of problems in identifying proper and desirable lands. Their problems, I believe, have been satisfied by Cook Inlet and the State.

Sen. Poland: Representative Huntinton?

Rep. Huntington: I get the feeling sitting here (IA) I'd like to ask you two questions. First of all, who was in agreement first (IA) Washington, Anchorage or Juneau?

Camkoff: Speaking of what agreement?

Rep. Huntington: (IA) Cook Inlet and (IA)

Camkoff: As it affects the villages within Cook Inlet?

Rep. Huntington: No. You know, you said you were working under (IA) Where was this (IA) drawn up at?

Camkoff: Okay. Let me drop back a little bit and draw you the village picture, those villages that are affected within this agreement within the Cook Inlet boundary. The Cook Inlet villages have brought in, I would call it, under a double tri-party agreement. The original tri-party agreement was called the Cook Inlet, the State of Alaska and the Department of the Interior tri-party. That set out and identified certain parameters of the trade. As it affected the villages, those had been as selected lands in Lake Clark, it involved us in this tri-party agreement where the Cook Inlet villages, State of Alaska and the affected villages. So when I'm talking about an agreement, we had an agreement with Cook Inlet and the State of complying and fulfilling these (IA) of these (IA).

Rep. Huntington: No. First I asked you where does this mean, where was this brought up - Washington D.C.? This agreement that (IA) the one where we're testifying on now, the (IA) royalty agreement. (IA) Washington D.C., Anchorage or Juneau?

Camkoff: I couldn't tell you.

Rep. Huntington: You don't know?

Camkoff: No. I think it's probably a combination of... I think that the federal (IA) much more technical (IA) than I do.

(inaudible)

: Inaudible

: Yes, the agreement, that is (IA) I would first (IA) about a year ago. We had some (IA) in the State (IA) the Federal Government and as we talked with people, plan and develop a coastal development (IA) contribution (IA) benefit Cook Inlet region (IA) and (IA)

Rep. Huntington: Then you feel the native corporations are capable of drawing up its own agreement then on their own side?

: Yes I do.

Rep. Huntington: Then you don't have to run to the Legislature everytime you want a (IA)?

: I agree.

Rep. Huntington: Thank you.

Sen. Poland: Are there any further questions of Mr. Camkoff?

Camkoff: Mr. Huntington, in the one agreement I was saying that the Knik village corporations had gone into Cook Inlet as a...

: I think that's... (IA) clarification of that law. I think (IA)

Camkoff: Knik village corporation and other villages that identified lands in Lake Clark more or less signed a contract agreement supporting those characteristics of the trade with Cook Inlet and we...

: (IA) the village corporations (IA) and the regions (IA) desire to have the villages present (IA) or abandon the selections in Lake Clark (IA) do that. And so the villages have to agree with (IA) selections in Lake Clark (IA) agree to do that and so (IA)

Rep. Huntington: Okay. The reason I asked you is that I get the feeling here that the Legislature wants to do that and everytime you want take (IA) paper and pencil and ask someone if it's okay (IA) and I don't agree with it.

(inaudible)

Sen. Poland: Are there any further questions of Mr. Camkoff? Thank you very much. John Alsworth?

Alsworth: Senator Poland, members of the committee, ladies and gentlemen, my name is John Alsworth, a native of Port Alsworth, Alaska. For your information Port Alsworth is located within the subject land of this hearing and has been in existence since 1941 when my father and mother moved there. We have incorporated as a native group as Tanalian Incorporated under the provisions of the Alaskan Native Land Claims Settlement Act of 1971. However, there are certain complications which have hindered our attempt to attain recognition and gain rightful benefits under this said Act. These complications are as follows: we are enrolled to Port Alsworth and shareholders in the Bristol Bay Region. The location of Port Alsworth is within the boundaries of the Cook Inlet Region. I understand that this land was withdrawn as regional deficiency land and converted to village deficiency land by Public Land Offer. Prior to December 18th of last year certain villages of Cook Inlet filed applications for the lands we have applied for. The reason for this testimony is to bring to light the property interests which we lay claim to within this contested area. Regardless of the outcome, we want our claim to the Port Alsworth lands protected and written into the land swap agreement. After attending the hearings here tonight, our feeling as a group is that we are being ignored by higher interests of bigger corporations or operations. After thirty-five years of my family living at Port Alsworth, we as a group feel that we should have first choice of the land to be filed on.

Rep. Anderson: Mr. Alsworth, really as far as I can determine, there's very little that this committee can do to resolve your problems. But I think it's very helpful for your claim from your point of view to have this particular problem brought to our attention. I think that Mr. Huhndorf has probably listened very carefully to your need here and I'm sure that he will be getting in contact with you. So I think it would be a good idea if you two got together.

Sen. Poland: Senator Rader.

Sen. Rader: Excuse me, I understand, Mr. Alsworth, are you a member of the Cook Inlet (IA) organization?

Alsworth: No. I'm a member of Bristol Bay.

(inaudible)

: (IA) Cook Inlet. (IA) is that down south of Homer?

: No, that's located on Lake Clark.

: Oh, that's right. Yes, that's right... We're, as you've probably gathered by what you have heard here, we (IA) position, you write this Act. I don't know... (IA) I don't know what should be done...

Sen. Poland: (IA) I appreciate Mr. Alsworth's bringing this to our attention but Rep. Anderson and I feel sure that he'll be able to work with Mr. Huhndorf...

Alsworth: I kind of feel, myself, like a mouse under the rug because I'm representing a second people in this group. And I realize that I'm facing the State, Federal Government and the Cook Inlet Native Corporation and this is something that, you know, that I realize could be rather impossible for a group of (IA). But the reason why I come here tonight is to state my interest in the land. I've lived here all my life and it's kind of like someone giving away your (IA)

Sen. Poland: Representative Hershberger.

Rep. Hershberger: John, how much, beside the strip of your actual homesite and where the house is, acreage is involved?

Alsworth: 2,240 acres.

Rep. Hershberger: Less than 2,500 acres. All along the same continuous...

Alsworth: My dad has 160 acres patented that's on the edge of that.

: This was in the plot?

Alsworth: The Port Alsworth area was withdrawn from some five villages now on the south side of Cook Inlet.

(inaudible)

Alsworth: And I realize the problem. The land is rather inaccessible, you can't, you know...

(inaudible)

Sen. Poland This is something over which we haven't any...

: Has the earmarkings of an internal problem.

Sen. Poland: (IA) two regions...

Sen. Poland: Mr. Huhndorf, do you care to comment on...

Huhndorf: I've had a couple of occasions to talk with representatives of Port Alsworth and (IA) trying to (IA) under the trade (IA) and the land would then revert back to its original (IA) we take that stand (IA) and we're prepared to (IA)

: (ianudible)

Sen. Poland: When could we (IA)

Huhndorf: Inaudible

Sen. Poland: Thank you Mr. Alsworth. Thank you. Nelson Ankapak?

Ankapak: Good evening Madam Chairman, ladies and gentlemen. I really don't know where to begin primarily because each time that there is a person up here testifying for Cook Inlet Region, State of Alaska and the Department of Interior land swap it seems like they have looked at my notes. So I really can't (laughter) Anyway, because we have a limited amount of time, I'll make my statement very brief. You have just recently got the agreement between Cook Inlet Region, State of Alaska and the Department of Interior was finalized. I believe that this is a first of its kind to be reached here in Alaska. That is, that three of the largest land holders have came to an agreement, State of Alaska and the native community. We have followed the progress of the course of agreement very closely, primarily because Calista Corporation is one of the corporations that is adjacent to Cook Inlet. And I might add that although the agreement identifies Cook Inlet, State of Alaska and (IA) as parties to that agreement, that before the terms were finalized that Cook Inlet and the members of Calista Regional Corporation had a few meetings and came to some kind of a compromise. I might add that when the Land Claims Act was passed in 1971 and consequently signed into law on December 18, 1971 by, then, President Nixon, the United States Congress declared that there was a need for a fair and just settlement of claims of (IA). Some of the terms of the land swap, I believe, even (IA) by the Federal Government, the State of Alaska to fulfill this need. I believe that late in the game, the Dept of Interior realizing that they did not really fully fulfill, and yet the Act was passed by the United States Congress for fair and just settlement. Thus, I beleive, that was one of the reasons why the tri-party agreement was reached. In short, Calista Corporation is supportive of the terms of the Cook Inlet settlement and would urge the State Legislatures to support them of it. Thank you very much.

Sen. Poland: Thank you. Are there any questions for Mr. Ankapak? Thank you very much Mr. Ankapak for appearing here this evening. (IA)

Armstrong: My name is Carl Armstrong. I'm chairman of the Kodiak Regional Native Corporation in the Kodiak Islands. I'm secretary of that corporation and I serve on the staff as public relations. I'm editor of the Kodiak Islander newspaper. I'm here to urge that the settlement that has been proposed be approved and to... I think I wrote out a list. I find it almost incredible that the Alaska Department of Fish & Game, Alaska Wildlife Service, the U.S. Forest Service, the Land Use Planning Commission, the Governor, the environmentalists, the Borough and the Congressional delegation made up of democrats and republicans are in agreement. I think in the course of the four years we have tried to

implement the Act, believe me, it has never happened before.
I serve as the... Kasilof Land Department...

(break in tape)

Armstrong: ...at least I'm in debt. Hopefully you will correct that situation. In addition to all my other activities, I often serve as a consultant to other regional corporations around there - Iliamna Corporation. Those of you who have been in the Legislature a long time, I think John Rader was the one who told me that a consultant -the definition of a consultant is a man who knows eighty-seven different ways of making a buck but he doesn't know any women. Sometimes that's the way we feel in trying to implement this Act. This agreement, placed in front of you, represents, we think in Kodiak, a pioneering effort under the most difficult circumstance, combining land planning, equal value, the interest of local communities, the future economy of the State and the need for a just and equitable settlement. I'm not going to say anymore than that. I would just urge that you consider the fact that all these agencies and these personalities are very diverse and yet in consulting together on a most complicated matter have come to an agreement. And they put it in front of you people and it's up to the Alaska Legislature now to either say yes or no. And that's my understanding. If you try to alter it, my understanding, than it's all over with. You're saying that in effect (IA) I hope that you won't do that. It would seem to me that the Congresssional delegation, after the display they made over the two hundred mile limit, if they could come to an agreement on this complicated matter, it surely went through the mill, so all the compromises have been made. All the debates have been spoken and there isn't much more than can be done. I'm aware of some of the complications that they got in to and of the sacrifices that everbody has contributed in arriving at some sort of an agreement that is acceptable. I sincerely urge that you do everything within your comprehension to approve that agreement. Thank you.

Sen. Poland: Thank you Mr. Armstrong. Mr. Anderson wants to read the statement of the Bristol Bay Corporation into the record and we have one more witness.

Rep. Anderson: Thank you. I just received a letter from the Bristol Bay Native Corporation that they wrote to me and they state that, "the Bristol Bay Native Corporation hereby goes on record in support of the land exchange agreement between the Federal Government, the State of Alaska and the Cook Inlet Region Incorporated provided that the parties involved recognize and give assurance that the property interests of Port Alsworth are protected." And that's signed by Harvey Samuelson, President of the Bristol Bay Native corporation.

Sen. Poland: Thank you. Mr. Galliett.

Galliett: (IA) Maps (IA) like to mention took me about 60 seconds and think I can do it.
Sen. Poland: Mr. Galliett is our last witness so we will not be meeting (IA)

(inaudible - many people talking at once)

Galliett: Senator Poland, members of the committee, thank you for the opportunity to (IA) I know you've waited a long time (IA) and I admire your tenacity. I think one question here at the outset should be, how far ahead should a statesman

look? I don't know whether you consider yourselves statesmen or not but what we're talking about here is income to our children, our childrens' children and beyond that. The question is whether we're going to give that income to a small percentage of the population of this State or whether the eighty percent of the population of this State is going to retain our most valuable State lands. Now, we're going to be here a long time as citizens and our children are going to be here a long time. Now, what surface and mineral estate are we giving away in this deal? There's a long list of lands that I could cite and it would just waste your time. You have the list. It's difficult and tedious to analyze it. It's taken me weeks. I presume you will just have to do it. The most important moneywise piece of land in this deal is the Beluga coal fields. But close in importance would be the Homer coal fields. And possible next in order would be an industrial and port site on the west side of Cook Inlet which is also involved in this give-away. Now I think, I will try to confine my technical remarks to the Beluga coal fields and the Homer coal fields because there isn't time to go in to the other details. One of the problems that we have with this deal is its uncertainty. It's a blank check to which you're going to put your signatures and then Mr. Smith behind me is going to sit down with the native corporations and he is going to decide what he wants to give them of our State lands. You are not going to know the deal. The way it is written does not permit that. Now one of the problems built into this arrangement, and it was done deliberately because otherwise too many objections would have arisen in particular instances of land being given away, but one of the problems is that many of these villages have overselected, they have selected according to the map which sets forth all alternatives. And I'm not sure that anyone knows what it is they're going to get or what it is that you're being asked to give away to villages. You've seen various figures in the newspapers and you have, I believe, a copy of all my articles in your hand so there is no point in belaboring that issue. How much coal are we giving away? You've heard the experts from the Division of Lands and the Division of Geological/Geophysical Survey who were called in after the fact to justify this deal give their quantities. Now, I would like to tell you how I got into this so you understand something about whether I have a conflict of interest and just how much work has gone into my determination of quantities of coal in the Beluga area. In the first place, I was brought into this by an oil company which calls itself an energy company which still has interests in Alaska that they're pursuing with very, very little help from me. They asked, when they put me to work looking for an industrial site for a refinery to refine State royalty oil, to carefully consider the fact that they were an oil company and therefore interested in coal and not merely oil or gas. So I think I went overboard a little and acquired an awful lot more information than they ever expected. At any rate, they got it. And particularly on the Beluga coal fields. Now, initially I depended on a report by Barnes which is available to the committee which dealt almost entirely with surface outcrops because in the days when Barnes did his work, ten or twelve years ago, no one would think any deeper than a very limited stripping depth of coal and ...

(tape ten)

Galliett: ...the knowledge of how to convert it into something that we can afford to ship, the fact that we're now at the point where we can make oil out of coal competitively with foreign oil. The situation is getting slowly better as research improves the details of the processes that are available to us. The first oil control plant was just contracted for the United States government and it's to go in near St. Louis. This production plant and not merely a (IA). What I did later, after my initial studies of coal and acceptance of some of Barne's figures, was look back again at the rules that these people in the geological profession applied. When they estimate coal, for example, they are very conservative. They don't like to be put in the position of making a grand statement and later having it shot full of holes and being embaressed. So rather than be embarrasses, they establish very arbitrary limits as to how far they will project coal, or infer coal, from the outcroppings or drill holes. Now, this kind of estimate is totally inadequate for the purpose of a large corporation or the State or any other person or group that has the stewardship of valuable property. Of course, the best information, there are others that weren't, and using the mud logs and the electric logs, he has given us information on coal how much coal at varied depths, how thick, what kind of (IA) and various information like this that general good math (IA) how much thickness of coal occurs between 0 and 2,000 feet, 2,000 to 5,000 feet and then again from 0 to 10,000 feet. The quantities of coal are almost unbelievable and yet, on top of all that, I have obtained logs on some of the wells closest to the Beluga area and its my opinion that Mr. McGee, again, as geologists are wont to be, he has been very conservative. I think he has understated even the enormous amounts of coal, but nevertheless, I accepted his figures. I even reduced his figures in making projection from them. Now one of the problems you have here (IA) value (IA) coal (IA) corporation (IA) one we have a lot of faults (IA) all the oil and gas wealth comes in this (IA) faults (IA) instead of drawing the arbitrary (IA) lowland (IA) now, what this figure gives us finally? (IA) coal (IA) 2,000 feet

(testimony barely audible)

(IA) don't understand (IA) the Department of Interior has practically required that coal land (IA) prospecting here in my studies somewhat based on actual physical knowledge. One thing that I'm very conservative in when I talked to Mr. Hackett of the University, still formulating his information on this area. He was (IA) prospectus, he was (IA) information and I recollect and my notes reflect (IA) tertiary sediments contain coal in varying amounts (IA). So to some extent all this work is based on (IA) actual drill holes and the use of mud (IA) the only thing I can't report to you, as that I have not completed the analysis of the electric log - we're working on it (IA) next week instead of coming in here and giving you a lot of malarky about how little coal there is in defense of the deal that's already been made. At least you can see I've done some actual physical work on it and I bring the results of it to you and they can critize my newspaper articles and they can critize my work but at least you have it. (IA) Now from that from those contours, I took every township in the Beluga basin that was in the swap area, and marked on the maps, and I took three

things: I took the percentage of the townships that contained any coal, that is, within the sedimentary basin, the depth of coal as shown by the contours within 2,000 feet of the surface, and finally the 50% factor of ultimate recovery. That would yield recoverable coal, if you multiply each township (IA) figure by 40 million tons for every foot of coal covering the township. The mechanics are really not so important. I've done this twice, independently. The first time I came up with 15 billion, 800 million tons. The second time I came up with 13 billion. Now, we're allowed certain variations in that -it's very crude. I make no claims that it is absolutely accurate or that it constitutes very reliable information. But it's better than just making guesses or taking an arbitrary boundary around coal outcrops. It's a heck of a lot better than taking below that level. And that's what has been done. (IA) Now, since I did that, I've listened to Mr. Hackett who tells us the sedimentary base is several thousand feet deeper than the information on which my prospectus was based. If anything, it nearly halves the coal, not greatly but somewhat. Now, there's so much coal in that area that you're not going to mine it out within a short period of years. It's not going to be a flash in the pan like some of our oil fields. You're going to be mining there for a hundred years or more, probably more. We really needn't concern ourselves with whether it's going to be surface mining or underground mining, we know (IA) accessibility to deep tide water. It's going to be mined by surface mining methods first, then underground methods as mining becomes established and market lines are put up. And finally, I have no doubts but what underground gasification will take the last measures of coal in that area. Possibly long after we're gone. Mental health lands, by comparison, mentioned 13 billion. The State figures on mental health lands with similar calculations came up with about 10 billion (IA) We're not talking about 75% having been taken out of this deal, not at all. We're talking about more in the deal yet than what's taken out. We can labor over figures all night and you folks are tired, so I'll go on. A critical deep water port (IA) we're giving away in this deal will probably end up in the hands (IA) because they're allowed to select one township of surfaces in that area, too. Why is that site so important to us? (IA) has done damn good planning in this State than wander in and out with all kinds of environmental (IA) and never sits down and talks planning. Where are the railroads going to go, where are the pipelines going to go, where are the cities going to stand, where (IA) going to be. Do they think about it (IA)

(testimony becomes nearly inaudible again)

do they think we're going to stay 300 or 400 thousand (IA) that's ridiculous (IA) we should have State lands for some physical improvements that must be made for lack of good (IA) and because I have a client who's interested, I have (IA) bring (IA) over future life of the enormous coal field. There's simply no correspondence in value. This is something that takes a lot of work and the only way to do it, is to make a list and start putting your dollar values down on both sides of the column. I'd like to ask another question to illustrate some of the troubles with this (IA). Why did the amendments to our Statehood Act permit a waiver of the equal value provision? Well, I can tell you in a few words. That amendment had to be put in or people like myself and other citizens who are aggrieved by this

whole thing, would have stopped it in court on federal grounds, not State law grounds, but federal law. Now, what's going to happen is, unless you folks write a bill to eliminate equal values from our State Act, this thing is going to be challenged in the State courts on the basis of our statutes. The changes shall be on the basis of equal value and either party to the exchange (IA) cash in order to equalize the value of the property of exchange. I'm not asking you to write such a provision. I'd just as soon you passed a resolution and then we'll take it to court. (IA) don't want injustice to most Alaskans. You have many proponents here, many of them stand to benefit financially. Why is this deal being pushed so vigorously and in such a short time? Another year or two would permit the State to do the transferring necessary to determine what the values are and do it right. I submit that (IA) of Norway, who's going to (IA) coal and Inland Pacific who owns that coal (IA) would never, never dispose of even a fraction of these coal lands without a drilling program and a complete geological report and this report that you got from the State Division of Geological/Geophysical Survey simply does not conform to what constitutes a good geological report and it lacks information from drilling. The cost of that drilling is such a tiny fraction of the potential values lost here that it simply is not right to dispose of that land without knowing what you're letting go.

I think it boils down to one thing - these Cook Inlet lands that you are being asked to dispose of (IA) survey once they change hands, any production, of course, benefits these native corporations, but more important than that production, which is going to be very low income production for some years I'm afraid, is the asset value added to this cost. It shores up the soft so that other management still needs (IA) values (IA) in a few years when it's saleable will have a very high value. It will simply be impossible to lose those values in that time.

What is a prudent course for the State to do in a thing like this so that all citizens are treated fairly and we don't rob one group to benefit another? We're all citizens of the State, some would rather be treated specially and given special benefits. But we're all together and many of us plan to stay and we'll probably be buried here. First, I suggest that you reject this blank check trade. It is wrong. Second, I say drill these coal fields; that takes an appropriation. Then you'll know what you're doing. (IA) Finally, give the native corporations a chance to obtain title to specific lands and rights that they claim and to make the selections that they're given two years to make. (IA) instead of the mystery (IA) adjucated by Mr. Smith. Another item, trade only on an equal value basis as determined by independent appraisals. I

do not trust the State administration to appraise this land in any way. Another recommendation, all coal lands should be frozen. We're throwing away income on the cheap (IA) have no escalation (IA). This should be done immediately. Finally, (IA) change our coal royalties to a percentage (IA) price so that we get a fair return on our (IA). And last, but not least, if we turn this land over to the Native corporation for a profit making enterprise, and they administer their lease to another profit mining company, you're throwing the doors open for all the evils of surface mining that occured in the other states. I hardly need to remind you that you don't have any surface mining laws, you don't have any coal conservation laws that I know of. You're starting this thing loose for destruction just as bad as I've seen in Missouri around my wife's old home --mounds of material that will take years to grow over with something (IA)....Finally, and I think this makes sense to the people on this Committee and the Legislature, let's call a spade a spade. I would like to see this committee and this legislature purge itself of conflict of interest in this matter. There are too many people that have a financial gain in this deal serving on this committee and in the Legislature and I would like to see them not vote on this issue at all. Thank you.

Sen Poland: Representative Cotton.

Rep. Cotton: You know, there are probably a lot of comments to be made about many of the things you said, but, one thing you did mention about people on the committee and people in the Legislature that may have a conflict of interest making a decision on their own not to vote on the matter, of course you know, that's not up to them. Any time a member of the Legislature decides that they don't want to vote on an issue, they have to have the full consent of the rest of the body and that's a point I thought you might not be aware of.

Calliett: I'm aware of it. I don't know how to solve it but I also know the system, the principle of good government should not be overlooked in the matter of such potentially great loss to the people. It won't pass. It will be observed and it will be criticized and it shouldn't be done that way.

Sen. Poland: Representative Osterback.

Rep. Osterback: Madam Chairman. When you talk about "we", would you explain who "we" is?

Sen. Poland: As far as I'm concerned, right now when I talk about we, I'm talking about 80% of the non-native citizens.

Rep. Osterback: Well, you were talking about the (IA) too and we don't have any up here unless its from California or Texas.

: That's right.

Rep. Osterback: So, you don't want, you want everything to (IA) be controlled (IA)...

: No. ABsoluetely not.

Rep. Osterback: Well, that's the way I took it (IA).

: Well, that's not right. I don't. (IA) State of Alaska to retain ownership of their lands and to administer them in the public interest and in an open way.

Sen. Poland: Senator Rodey.

Sen. Rodey: You mentioned certain conflict of interest that the Legislature has. Could you be more specific with regard to those so that you don't implicate the whole Legislature (IA) would like to know (IA) conflict of interest (IA) suggest a better word.

: I think suggest (IA) I have gone thru the records in the Alaska Public Office Commission of most of the Legislators - not all of them - I didn't really have time. But I have found that quite a substantial number own stock in Native corporations and some that apparently should have reported stock in Native corporations either as trust or interest actual ownership that have not so reported. They very probably do, because they hold office in Native corporation, and (IA) the records are public....I don't see any great point in mentioning names and I probably (IA) ....

: (IA) object.

Sen. Poland: Senator Rodey.

Rodey : You stated that you think that the Governor's royalty rate as unreasonable. I agree with you, this was a fantastic give-away by the State But you also state that if in 17 or 18 years I believe, that you said we we could do something about the royalty rates. On what do you base that statement?

Galliett: Discussions with various people and in reading the contracts that we have with the mining companies. There is going to be some litigation, I feel, when they, when the State attempts to change these but, I think it can be done, in fact, it must be done. You can't leave these royalties rates (IA).

: (IA) I would hope you object (IA). Price could answer that question as to the validity of the leases for the forseeable future and the length of years by which their value is judged and how long it will be before (IA).

Price: (IA)

Galliett: Now, may I comment (IA). I don't propose doing anything doing anything to those leases during the next 18 years or so, that's a valid contract but when it's time for re-negotiations, that's the time to

I think, we can make a change. When the laws are passed, some of them are not direct. Some of them (IA) negotiations. Sitting down with these people and telling them "alright, you've gotten away with a good thing for 18 years and you've paid all your development costs, now we're going to get ours back again," but that's something that will have to be left to the year that it comes up.

: (IA) leases. I'm not aware of the attitudes the State might have in re-negotiating. (IA).

Price: (IA)

: (IA)

: (IA)

: Thank you.

Sen. Poland: Is Mr. Bateman still here? Representative Cotten.

Rep. Cotten: I'd like to comment on something that Senator Rodey mentioned, also Mr. Galliett said that there sometimes not so direct methods of re-negotiating and someone else brought up the fact that there is a mining license tax that probably would apply to the coal fields. In answer to your question, how do you re-negotiate (IA) might be worth (IA)
(IA) comment. (IA)....In regards to who owns the land, of course, a severance tax is being applied to this coal and the State can derive the benefits from them, the royalties, in this case would probably be much less than oil severance providing the vast bulk of 90% of the income to the State. Would you comment on this, the question being does the actual ownership of the land make a great deal of difference to the State has the ability thru severance tax to extract any reasonable amount of income from it that it (IA) of that resource.

Galliett: That's a very good point and it's one I've thought about a lot. It depends on the make-up of the Legislature, I suppose. Now, let's be realistic. You've got a group that will benefit from no severance tax because it's their land, their money, their income (IA). They will oppose it. It's not too easy (IA)...you fellas haven't been awfully successful in taxing the mining industry as I see it. What'll happen in these proposed severances taxes is pretty obvious (IA) money that the native corporations might otherwise enjoy?.

: (IA)

Sen. Poland: Mr. Hawley.

Hawley: (IA)
The gentleman's point is well taken, as far as drilling having been done, however, the depth of that drilling is inadequate to show the reserves of deposit resources of coal that are in that area. I've talked to some of the people that held leases (IA)...they've told me that results of their limited drilling. None of those people have, except possibly (IA) and one or two others, have wanted to spend a lot of money drilling because, up until recently, the

whole thing didn't look like a very good proposition. You must realize that only a very large mine over there can afford all of the overhead costs in establishing shipping facilities, (IA) and so on. So, a lot of the little guys fall by the wayside. I have been advised that there's enough confidential information that is available to you but not to me that you could learn a lot more, alot more about these coal fields than I can make available to you with the information that is public. I would suggest that this information be presented to you before you make any decision. But, more than that, none of us can know what's going to happen in that sedimentary basin which is immediately adjacent to (IA) thickness of coal measures (IA), of course, until you drill it. (IA) to drill it, there are companies that would be only too happy to do it. Until you drill it, you don't know what you're getting into and that's what, in my opinion, you need to do to protect the State.
I don't think this agreement has to go this year or next, maybe the year after. I think being rushed into this thing is typical of the pressure and tactics and all justifications for this haste, this three weeks or a month to the Legislature, ...are just an attempt to cover up what you could discover or perhaps discover in four years in just a little more time. I think the Congress would fully understand if you hesitated to dispose of a coal field as energy resources and in all probability as great as Prudhoe, or greater, while you took those minimum steps to determine just what you're doing.

Sen. Poland: Are there any further questions of Mr. Galliett. Thank you very much. Is there anyone who wants to testify. We will not resume the meeting tomorrow. Have we covered all the names we had on the list of people that were here? Yes?

: I'd just like to say (IA) .... My name is Bob and I've also (IA) geologist here in Anchorage. I've lived here in Alaska for several years now and have been involved mainly in metal exploration for several companies. I'd just like to put this thing in the full potential here which is the main (IA) people are concerned about into a perspective of profitability. This is what we're talking about over here is what the State gives up and what the Cook Inlet Region, or whoever, may gain from it is profitability in the long term. We can do a lot of things with percentages and figures here. It has been suggested (IA) .... there's lots and lots of drill holes, particularly south of Katchimak and the Cook Inlet Basin that indicate a fantastic amount of reserves in coal if you total up,as has been done here, every single bed down to 2,000 feet and if you go below that to 5,000 feet, you come up with just whopping figures and if you put a dollar value per ton on this figure, even if it's very low, with those kinds of figures, you arrive at an exhorbitant potential dollars in possible royalties. But, the thing is that the Committee here should be considering as far as this land trade goes, is the profitability of reserves (IA) at those depths the coal is there (IA) the near future and that might not be in the next hundred years, there's not going to amount to that much. There's coal, even more coal reserves than that underneath the Cook Inlet Basin, underneath the water and a lot of talk has been generated here about possible gasification methods and (IA) going to be able to turn this coal into oil and so forth.
There's some credibility to that and hopefully this is going to be one of the ways that the U. S. and Alaska keeps going here as far as energy goes but, again, you're forced with the same thing, the deeper you go, the more

expensive the cost of drilling, the more expensive the cost of your vacuum and the whole thing deals in profitiblity. If you can't its always been in our economic system, if the dollars aren't there, then there's either another way found or the price goes up to (IA) ...And my suggestion is that in spite of the fantastic tonnages that are possible in the Beluga area that it is the profitability of the thing that the committee should be concerned with and I contend that this is far below what has been spoken of here, if the profitability from my estimates and from other reports over there is in the order of a few billion dollars. The State reports contend there is 15 million dollars or so and another projections have been up into 60 million dollars but the point is that it's a few million dollars of potential royalties if they're sure and in the long run and not billions of dollars. Once you look at the overall land trade here and what the State is getting and what the Federal Government is getting.
In order to appease Cook Inlet, and other parties here, the State would be giving up a potential few million dollars worth of mining royalties but in turn they're gaining surface real estate of high value near Anchorage, Campbell Airstrip and so forth that's been talked about; but, if you want to talk about future dollars and what this (IA) may be worth in future years, what's Campbell Airstrip going to be worth in 50 or a hundred years? I just thought I would like to get a point in there on bringing this thing back into perspective a little bit as to what the Committee should be looking at. If you have questions, I might be able to help you.

Sen. Poland: Are there any questions of (IA). Thank you very much. We appreciate everyone's patience and (IA).

: Madam Chairman, (IA) perhaps an opportunity to speak concerning some of the points that we have not had the ability to listen to some of the comments, however, because of the late hour, because of the people (IA) of the committee to put in, and also because of your request that, again, certain members of the staff be present in Juneau, I think that if we could have access to some of the information that Mr. Galliett has indicated here, we could probably, by Wednesday, have a response from the State Geological Survey concerning some of the items raised and other points that came up from some of the speakers (IA) so if that's ok, refer that till Wednesday.

Sen. Poland: (IA)

: (IA)

Adjournment

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Outline for Oral Presentation
February 11, 1976
David Jackman - John Katz
(This outline represents the personal views of the speakers only).

AN ANALYSIS OF ISSUES RELATED TO THE PROPOSED COOK INLET LAND TRADE

Comparative value of lands given and lands received

The State is giving up 21.5 townships of land:
8 townships in Mat-Su Valley and on the Kenai Peninsula,
13.5 townships in the Beluga area.

The State is receiving approximately 52 townships in exchange:
26 townships in the Mulchatna River drainage northwest of Lake Iliamna,
11 townships adjacent to Kamishak Bay (on west coast of Cook Inlet, southwest of Augustine Island),
7 townships in the Tutna Lake area (approximately 25 miles west of Lake Clark),
4,000 acres (.17 township) of the Campbell tract for recreation and public uses only.

ARGUMENT FOR: The State is giving up lands that are already destined for private development and receiving lands that should best be kept in public ownership.

ARGUMENT AGAINST: The State is giving up lands worth far more than those it is receiving, and is losing both future revenues and planning control over the disposal of large tracts of land in the Anchorage Bowl and Kenai Peninsula area.

Value of the Campbell tract

ARGUMENT FOR: "...the State would receive title immediately to the Campbell tract in the heart of the Anchorage bowl...A very conservative figure of three thousand dollars per acre has been assumed for the Campbell tract. This figure has then been discounted fifty percent under the assumption that if the State did not gain immediate title to the area under this proposal, it would stand a respectable chance of obtaining the lands at some time in the future." (These and subsequent quotes are taken from Mike Smith's memorandum of December 6, 1975. The Committee has access to that document and can place these brief excerpts in their fuller context).

ARGUMENT AGAINST: Seven-eighths of this tract was protected from any possibility of Native selection by the two-mile buffer zone in §22(l) of ANCSA. Either the State or borough was very likely to receive this

tract anyway under the Recreation and Public Purposes Act. Even if this did not occur there is every indication that the Federal Government favors keeping this tract in public open space use due to its importance as a watershed and recreational area.

Protection of Bristol Bay Fishery Values

ARGUMENT FOR: "In the Lake Iliamna and Bristol Bay National Resource Range proposal approximately 15 percent of the lands will be under the control of private Native corporations. The State can more effectively administer to the requirements of its citizens in those areas if it owns the other lands within that region. Additionally, the tremendous dependence upon the salmon fishery resources of that region, and the current responsibility of the State to manage those resources, argue cogently that the State should also control the uplands in that area".

ARGUMENT AGAINST: The State will get no lands at all in the Iliamna watershed which is the critical area for the Bristol Bay fisheries. The lands the State will receive in the Mulchatna drainage are much less important from a fisheries standpoint. Irrespective of the proposed trade, the State will have an opportunity recognized in §17(d) of ANCSA to select lands in the Iliamna drainage within the Bristol Bay village withdrawals after Native selections are completed. The State has other regulatory tools such as the Anadromous Fish Stream Act which can be used to protect fisheries habitats.

Out-of-Region Selection Rights

ISSUE: Under the proposed trade agreement, Cook Inlet Region will have an additional three years to identify and select approximately 30 townships of land from available federal lands outside the region. They are prohibited by the agreement from selecting any lands the Federal Government wants, usch as d-1 or d-2 lands included in the Secretary's park, refuge, and forest proposals, or any of the d-1 buffer lands around these areas called "zones of ecological concern". This will throw Cook Inlet into those lands that would otherwise be prime candidate areas for State selection. As to these lands, State selections could be frozen for three years, with Cook Inlet Region having the opportunity to take the best available lands from a resource utilization standpoint.

ARGUMENT FOR: There are provisions allowing the Secretary of the Interior, after consultation with the State, to submit a list of areas to Cook Inlet Region where approval of out-of-region selections is unlikely. At the end of three years, when the pool of at least 90 townships has been nominated by Cook Inlet Region for selection, State public interests can be further protected by the right of the State to pre-emptively strike 10% of the pool and then by the alternating selecting and striking process.

ARGUMENT AGAINST: The out-of-region selections constitute a loss to the State because these are lands that otherwise would have been available for State selection. (Approximately 35 million acres of land remain to be selected out of the Statehood Act grant of 103.5 million acres). Cook Inlet will be looking for the same kind of income - producing resource lands or other valuable lands that would be high on the list for State selection. With respect to the millions of acres that could be nominated under this procedure, there will be a freeze on the processing of State selections for three years. Thirty townships broken up in isolated private tracts will create the same kind of land management problems outside Cook Inlet Region that it was the partial purpose of this trade to avoid within this region.

Ownership and Control of Key Settlement and Development Lands

ISSUE: Should a private corporation be given control over the timing of development and pattern of disposal for large remaining tracts of land within the heavily impacted Kenai Peninsula and Mat-Su Valley areas?

ARGUMENT FOR: These lands are well-suited for settlement and slated for development anyway. Local sub-division and zoning laws will adequately protect the public interest. Also of like and similar character that the Natives are entitled to select under ANCSA.

ARGUMENT AGAINST: Control over the pattern and timing of State land disposals is an important public policy tool. The State may want to use or dispose of lands for other than minimum dollar returns. It is in the heavily-impacted, growth areas that the State should be careful to hang on to what public land remains.

Impact on the Proposed Lake Clark National Park

ARGUMENT FOR: The proposal results in the return of certain key lands in the Lake Clark area to federal control and prevents further Native selections in this area. In the agreement, the Secretary, Cook Inlet Region and the State, all acknowledge that there are nationally significant resources in the Lake Clark area, and that the scenic, recreational and inspirational resources of this area should be preserved. Area may be valuable for mineral activity

ARGUMENT AGAINST: This trade makes it difficult for the State to ever oppose the establishment of a National Park Service management area around Lake Clark. By the terms of the agreement, Cook Inlet Region is bound to publicly support the establishment of such an area. There are three other National Park proposals for the Alaska Range, and many view Lake Clark as the least justifiable proposal. In order to trade the villages out of Lake Clark, this agreement has become much more complicated than would have been necessary to resolve the regional selection problem alone. Existing village withdrawals are thought to satisfy village selection criteria.

Impact on The Kenai Moose Range

ARGUMENT FOR: Potential inroads into the Moose Range, such as those represented by the "Frizzel offer" for the settlement of the Interior Department's litigation with Cook Inlet Region, have been minimized. Restrictions on surface use and prohibitions on strip-mining will further protect public values on lands that are given up.

ARGUMENT AGAINST: The "Frizzel offer" was withdrawn and not re-offered. The legal authority of the Interior Department to ever offer the Moose Range for regional selections is seriously questioned. Sixteen sections of surface rights in the Tustemena Lake areas still constitute a substantial inroad, and development of the 9.5 subsurface townships could still cause major deterioration of public values.

Value of State Lands in the Beluga Area

ISSUE: Even thought the State may still control the major share of the area coal resource, these 13.5 townships could still represent a substantial future economic loss to the State. In a strict economic sense, the present discounted value of development 15-20 years in the future may be low, but in terms of long-term State interest, it may be highly desireable to have some revenue producing resource ready to bring on line 20 years hence when Prudhoe Bay is winding down. Royalty terms on existing leases could be renegotiated at the end of the initial 20 year terms. Controlling the timing and environmental impacts of coal development would be much easier if the State continued as lessor.

In-region Selection Pool of Surplus Federal Lands

ISSUE: The Secretary in conjunction with the General Services Administration is obligated to try to find 138,240 acres (6 townships) or acre equivalents, in terms of appraised land values (figured at $500. an acre), of land within Cook Inlet region made up of small odd tracts such as lapsed homesteads, surplus federal lands, or revoked federal reserves. These lands would then be made available for selection by Cook Inlet Region using some of the 30 townships out-of-region entitlement, and also made available for land exchanges with villages to trade them out of proposed National Park lands on the west side of Cook Inlet.

Viewed as a loss? Serious question of equating value.

ARGUMENT FOR: "...other federal surplus lands and unperfected public land entries which might go to CIRI within the region would be subject to a State veto (for up to 1,500 acres) and/or appeal process to protect State and public interests in these lands. Since the eventual settlement CIRI receives, whether by agreement, legislation, or by court action, will undoubtedly include these lands, the proposal represents the State's only opportunity to participate in protecting the public interests on these lands.

ARGUMENT AGAINST: Many, though not all, of the federal lands to be included in this pool would without this agreement be available for State selection under the 90-day preference right guaranteed in the Statehood Act. These are potentially very valuable lands. The $500/ acre equivalent formula agreed on in the proposal would imply total land values for this 6 township pool of over $69. million.

Swanson River Oil Revenues

ISSUE: Without this proposed agreement, there is some chance that either an administrative or a legislative settlement arrived at by the Federal Government alone might give Swanson River oil revenues to Cook Inlet Region. At present, the State receives 90% of these royalty revenues although there is a recent opinion of the U.S. Comptroller General challenging the right of the State to these revenues.

ARGUMENT FOR: "To the values to be received by the State as estimated above must be added values which, if the proposal is not consumated, might be lost to the State. The two most prominent values in this category are the ninety percent royalty revenues which the State receives from oil production in the Swanson River area of the Kenai National Moose Range...Any estimation of the value of these two possibilities...must assume certain levels of probability...and assumption of a .5 probability does not appear unreasonable...(this) yields an estimated value of $20.5 million".

ARGUMENT AGAINST: Under the present Comptroller General's opinion, the State may lose Swanson River revenues anyway unless the State is successful in legally overturning this opinion. In the absence of a finding by the Secretary that these lands were no longer necessary for the Moose Range, federal legislative action would probably be required to give these benefits to Cook Inlet Region.

Amendment of Statehood Act

ISSUE: Section 6(i) of the Alaska Statehood Act prohibits the State from ever conveying away the mineral estate in State public lands. Under State law, resources are disposed of by lease or location only. The recent amendments to ANCSA include a provision waiving the applicability of ¢6(i) in land trades such as the one proposed for Cook Inlet Region.

ARGUMENT FOR: This amendment will facilitate this trade and future land trades.

ARGUMENT AGAINST: This unilateral amendment of the Statehood Act creates an undesireable precedent. Unlike the treatment of native selection of some State lands under ANCSA, this time there was no formal acquiescence by the State in this federal action. Because the

Secretary can be used as an intermediary in any such exchange, this amendment was probably not necessary.

Impact on Proposed Talkeetna State Park

ISSUE: Approximately three townships of Native selected land conflicts with the northwestern portion of the proposed Talkeetna Mountains State Park.

ARGUMENT FOR: The proposed trade would recover these lands for State ownership and possible inclusion in this park.

ARGUMENT AGAINST: These townships are not necessary for a viable park proposal, and other measures such as the reservation of public easements could overcome this problem to some extent.

Alternatives to the Proposed Trade

(This subject will be dealt with fully in the oral presentation).

PROPOSED COOK INLET LAND TRADE

(Department of Natural Resources' Response to Jackman-Katz Analysis dated 2/11/76)

The following comments are offered in response to the document entitled "An Analysis of Issues Related to the Proposed Cook Inlet Land Trade" as presented orally by Messrs. David Jackman and John Katz to the Joint Resources Committee Hearing on February 11, 1976. The comments will follow the order and format of that document.

Comparative Value of Lands Given and Lands Received

The Jackman-Katz analysis neglected several additional lands which the State would receive:

1. 8 Townships in the Talkeetna Mountains.

2. Right to select, at the State's option, 12.4 townships in the Koksetna River area (12 miles west of Lake Clark) and in the Talkeetna Mountains.

3. Early conveyance to the State of the Point Campbell, Point Woronzof and Goose Lake tracts under the Statehood Act.

In the "Argument Against" three points are made:

1. State gives up lands worth more than those it receives.

2. State loses future revenues.

3. State loses planning control over disposal of lands in the Anchorage Bowl and Kenai Peninsula.

Regarding the first point, it should be obvious that the values received by the State in the trade are not strictly economic nor can they be measured only in relationship to the specific lands received by the State. There are many other elements of consideration involved, and their evaluation is complicated by inherent legal and political indeterminacies.

Present values are used to assign meaning to the future revenues involved Whereas the State certainly has interests beyond present (i.e., discounted) economic values, particularly with respect to the Beluga area, the State will continue to own the large majority of known and hypothetical coal reserves in that area.

The State is not disposing of any tracts of land in the Anchorage Bowl. With respect to Kenai Peninsula and Mat-Su Valley areas, the terms of the agreement specifically guarantee virtually complete State control of where Cook Inlet acquires lands. (See "Ownership and Control" comments on page three of the Jackman-Katz analysis).

Value of Campbell Tract

The Jackman-Katz analysis lists three main arguments against the Campbell Tract evaluation:

1. Either the State or Borough would likely receive this tract anyway without the land trade.
2. The tract is protected from Native selection by the two-mile buffer zone in paragraph 22(1) of ANCSA.
3. If tract remained in federal hands it would be managed as open space anyway.

In the State's economic analysis, the value of the tract has already been discounted by a generous 50 per cent, to account for the fact the lands might come to the State anyway. But the likelihood that this land would have come to the State in the absence of this agreement and before some alternative resolution of the Cook Inlet land problem is remote.

Fully one-third, not one-eighth, of the Campbell Tract is outside the protection of the two-mile buffer zone of 22(1). However, section 22(1) of ANCSA is irrelevant here, for the concept of allowing selection within the two-mile limit was accepted by the Secretary in the "Frizzell Offer," has been accepted by both the Secretary and Congress in the agreement document before this committee now

and will almost certainly be waived in any future settlement that occurs without the present land trade.

If kept in federal hands it would be managed by the Bureau of Land Management, an agency charged with disposal of the public lands of the U.S., an agency whose ability to manage an intensive use area within the State's largest population area has fairly been questioned. This scenario is clearly not desired by the Anchorage Municipality, which voted unanimously (10 - 0) on Tuesday in support of the land trade proposal.

Protection of Bristol Bay Fishery Values

Two major points under "Argument Against" are raised:

1. State will receive no lands in Iliamna Watershed.

2. Even without trade, State will have opportunity to select within Bristol Bay Village withdrawals.

Up to eight townships could come from the Iliamna Watershed, depending on the outcome of Question No. 2 below.

While the State maintains that it is entitled to select in these areas, the Secretary rejects that position and prolonged litigation will probably be necessary to resolve the issue.

Another important reason for acquiring State lands within d(2) withdrawals in this area is to strengthen the State's position vis-a-vis the Secretary with respect to the latter's National Resource Range proposal. Any improvement in the State ownership position will serve to strengthen the State's argument for complete State control of the area, for it will establish a land status pattern which is plainly incompatible with the Resource Range proposal.

Out-of-Region Selection Rights

The Jackman-Katz analysis speaks to four main points:

1. Only the federal government, and not the State, is able to protect lands from selection.

2. Lands exposed to Cook Inlet selection would be "prime candidates" for State selection.

3. The processing of State selections would be frozen for three years.

4. A broken ownership pattern of 30 isolated townships could result.

Point One. The Secretary is required to consult with the State before indicating to Cook Inlet lands which he will probably not approve. More importantly, certain lands specifically excluded from selection by Cook Inlet, particularly the "zones of ecological concern" (the d(1) buffer lands around the Secretary's Four Systems proposals), would be available for undisputed State selection. These "off-limit" areas include millions of acres of very good lands. Additionally, the d(1) lands within the Secretary's Four Systems proposals would also be protected. The State feels that several of these areas should more appropriately be available for State selection and control and these areas would also not be available for selection by Cook Inlet. Finally, the State retains a limited blocking power with which to influence Cook Inlet's selections from the pool.

Point Two. The inference that the lands Cook Inlet could select would be "prime candidates" for State selection has no basis in fact.

It must be remembered that the interests of the State with its broad public responsibilities are not strictly economic, the criterion which will probably determine Cook Inlet's selection decisions. Therefore, even if all remaining State selections were to be in competition with Cook Inlet, it is questionable how much conflict in selections would exist. However, since Cook Inlet cannot select outside of the five regions identified in the agreement, and since millions of acres of good lands are protected by the agreement from selection by Cook Inlet, the degree of conflict with State selections is considerably reduced.

Point Three. The State is guaranteed the right to continue to select lands anywhere extra-regionally regardless of Cook Inlet's selection process. The conflict would exist only when Cook Inlet identified those lands for nomination to its selection pool. The concern over a three-year freeze on State selection processing is of no concern since the logistics of BLM's adjudication of State transfer of title run to five and six years under normal conditions.

Point Four. The spectre of 24 to 30 townships of broken and isolated tracts of private land is very much overstated. Within its region, Cook Inlet could make similar scattered selections in any event, and this agreement requires that selections be made in at least township block size, a far greater constraint upon selection configuration than presently pertains to the region's selections. The agreement specifically states, "It is the intent of the Secretary and the State that all out-of-region selections shall be as compact as practicable, and that wherever possible, CIRI shall select lands which are contiguous to privately owned lands."

An additional point is the prospect of extra-regional selections for Cook Inlet even if the trade is not consummated. There is no way of telling under what conditions Congress might permit extra-regional selection. Under this proposal, there are definite safeguards for areas where the region cannot select and additional protection for the State through its consultation function with the Secretary and its striking provision.

Ownership and Control of Key Settlement and Development Lands

The analysis argues that the State would lose control over the pattern and timing of State land disposals, an important public policy tool.

On the contrary, the agreement is a perfect illustration of the exercise of that control, and it is accordingly structured specifically to provide for State control of ownership patterns. Selections will not commence until a complete land use study has been done of these areas. Then, selection will be only by mutual consent. If mutual consent cannot be obtained upon all lands, it is the State which then chooses which lands Cook Inlet may consider for its remaining selections. Thus, the agreement provides specifically for the control of ownership patterns which Mr. Jackman and the State so value.

Impact on the Proposed Lake Clark National Park

First, the Jackman-Katz analysis has taken one sentence of the agreement and edited it and quoted it out of context as follows: (The actual agreement passage is quoted in its entirety. Brackets indicate those words or phrases edited out of the analysis.):

> "The Secretary, CIRI and the State recognize that there are nationally significant resources

in the Lake Clark area. [Management of this area should be flexible and recognize] the scenic, recreational and inspirational resources that should be preserved [as well as State and local interests including subsistence and sport hunting.]"

The Jackman-Katz analysis makes two "arguments against":

1. The above language makes it difficult for the State to ever oppose a National Park Service management area around Lake Clark.

2. The Village tradeout provision has made the agreement "much more complicated."

Point One. The State in no way acknowledges or supports establishment of a National Park Service management area around Lake Clark. To the contrary, the specific language, edited out by the Jackman-Katz analysis, constitutes a Secretarial recognition that a flexible management system is required and that State and local interests including subsistence and sport hunting must be recognized. Moreover, the agreement memorializes the fact that the State continuously opposes the federal proposal.

Point Two. The Village tradeout aspect is not complicated. It merely requires that Cook Inlet Region, as a prerequisite to execution, must induce certain Villages to renounce their Lake Clark selections. The manner in which they do this is between Cook Inlet Region and the appropriate Villages.

Impact on the Kenai Moose Range

The analysis offered the following "arguments against":

1. The legal authority for the "Frizzell Offer" is in question.

2. The 16 sections of surface rights under the agreement still constitute a substantial inroad into the Moose Range.

3. Development of the up to 9.5 subsurface townships could still cause major deterioration of public values.

Point One. This argument (and others suggesting a distinction between administrative and legislative action at the federal level) are totally irrelevant. If there is another settlement which includes a portion of the Moose Range, congressional action will be necessary. The legal authority of the Secretary will be a moot question.

Point Two. Sixteen sections of surface rights constitute only seven-tenths of one per cent of the land within the Moose Range. Is this a "substantial inroad?" None of the conservation organizations which have supported the proposal regard it as such, nor does this Administration.

Point Three. The Kenai National Moose Range already has producing oil and gas fields. There are other existing oil and gas lease rights in the area today. The specific covenants in the agreement require that the same continued surface management control as exists today would continue to remain in the hands of the Fish and Wildlife Service. Therefore, in terms of surface use, it will make no difference who owns the subsurface rights.

Value of State Lands in the Beluga Area

The Jackman-Katz analysis indicates that the State would be giving up control of the timing and environmental impacts of development in the area. Under the terms of the existing leases, the State has virtually no control over the timing and development. The lessee may develop when he

wishes. Environmentally there might be some advantage to maintaining ownership, however, the State is still in an extremely strong position with its air and water quality regulations and there will undoubtedly be strip mining legislation on the books well before development in this area occurs.

In-Region Selection Pool of Surplus Federal Land

The Jackman-Katz analysis states that many of the federal lands to be included in this pool would, without this agreement, be available for State selection.

The best estimate of the Bureau of Land Management is that there might be 30,000 acres (1.3 townships) of lands available for the in-region pool. Probably the major portion of these (conceivably, all of them) would not be available for State selection should the Secretary decide in another settlement that the lands should be available for Cook Inlet Region. On the contrary, since the State has made blanket selections throughout most of the region, the State will take the position that most of the unperfected public land entries or other reverted interests within the region are already under State selection and are therefore not available in any case for the pool. If the State exhausts its

free blocking privilege, it may continue to block objectionable selections by substituting other lands on a value for value basis. In addition, the State at all times enjoys the option of advocating that the Land Use Planning Commission recommend that the Secretary exclude particular parcels from the pool.

Swanson River Oil Revenues

The analysis indicates that the recent Comptroller General opinion contends that the State is not entitled to its 90 per cent of the Swanson River royalties (in a separate action not related to the trade). The State's position, reviewed by several lawyers within the Attorney General's office, as well as the Attorney General, is that the State is in a very strong position in this case. In fact, the Attorney General's office has recommended to the Commissioner of Revenue that the State should consider the Swanson River revenues in all future State income forecasts. We are informed that there is a lively possibility that the Comptroller General will reverse this position without the need for legal proceedings.

Amendment of Statehood Act

The Jackman-Katz analysis indicates the following:

1. The amendment was needed to facilitate this particular land trade.

2. This unilateral amendment of the act by the federal government creates an undesirable precedent.

3. By using the Secretary as an intermediary in any such exchange, this amendment is probably not necessary.

Point One. Neither the State nor Cook Inlet Region felt or presently feels that this amendment was necessary to consummate this trade. The amendment was pushed by the Secretary of the Interior, not out of any paramount concern for Section 6(i) of the Statehood Act, but simply to allow the Secretary himself to have more flexibility in land trades. It has absolutely no effect on the state legal framework for land disposals.

Point Two. There have been at least two previous unilateral amendments to the land provisions of the Statehood Act by the U.S. Congress without previous consultation with the State Legislature. In those cases, as

in this, Congress was merely allowing the State more freedom or flexibility to do things which Congress originally constrained the State from doing.

Point Three. The State concurs that the amendment was probably not necessary. If the amendment does anything, it merely confirms the Alaska Legislature's assumption, expressed in the legislative history of the 1972 statute, that Section 6(i) has never been an impediment to transfers of the undivided estate to the United States under Section 22(f) of the Alaska Native Claims Settlement Act.

Important Point: As Mr. Katz has stated, the United States Congress cannot by federal legislation compel or authorize representatives of a state government to act outside the statutory constraints set up by a state legislature. In other words, although the Congress may have confirmed the view that the Secretary is not bound by Section 6(i) from the federal standpoint, and although it may have allowed the Secretary to trade for other than equal economic value, Congress has not authorized State employees to ignore State statutes which speak to those two points.

Impact on Proposed Talkeetna State Park

The analysis indicates that the three townships of Native selected land presently within the park proposal are not necessary to a viable park.

1. From a planning standpoint, these lands are certainly appropriately contained within the park. If the lands were to go into private ownership, the State would almost certainly, at great future cost to the State, find itself buying these lands back.

2. The Administration was specifically asked last year by the Senate Resources Committee to attempt to remove Native selections from these areas so that they could be addressed within the park proposal.

2/12/76

From: The Desk Of:

Dale P. Tubbs

2/18/76

Senator Ray Poland

Enclosed are my comments made at the Cook Inlet Land Exchange hearing. Also enclosed are copies for your committee members

Dale P. Tubbs

Deputy Director, Alaska Division Of Lands

02-001B

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS

TO: The Honorable Kay Poland
Chairman, Senate Resources Committee
and the Honorable Nels Anderson
Chairman, House Resources Committee

DATE : February 11, 1976

SUBJECT: Cook Inlet Land Exchange Agreement

The following is the substance and comments made at the Joint Senate and House Resources Committee hearing by myself regarding the Cook Inlet land exchange on February 11, 1976.

I am the Deputy Director of the Alaska Division of Lands, Department of Natural Resources. My involvement in the Cook Inlet land exchange has been minimal. My first involvement was during the 1st half of 1975 to identify some of the resources in the general area of Beluga Lake and the Mt. Susitna. On not more than three or four other occasions was I asked for general type information. At no time was there group staff review by the professionals within the division to discuss and evaluate the negotiations that took place. This is a reason for the conflicting testimony you have been receiving. No questions were posed to the Division of Lands staff to obtain professional opinioned comments regarding the merits of the negotiations.

My concern, questions and observations of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area as follows. There may be answers to some of them, however without the benefit of staff discussion, they remain as questions in my mind.

1. Congress has voided out the requirement for the state to retain the mineral estate when land exchanges are involved. With this being so, then why go through the exercise of conveying title to the Bureau of Land Management for reconveyance to the CIRI or the villages?

2. Even though Congress has voided the requirement to retain the mineral estate, Alaska Statute 38.05.125 requires that all leases, sales or grants of state land contain a specific mineral reservation (see attachment).

3. Under what authority is this exchange being consumated? Is it broad powers of the Commissioner AS 38.05.020; the broad powers of the director AS 38.05.035 or the provision for exchange of native lands AS 38.95? Regardless of which authority, was it the intent of the legislature to allow exchanges of this size to be consumated without a mineral reservation?

4. With Congress changing the mineral condition of the Statehood Act, is a ratification vote by the Alaskan voters necessary?

5. It is my understanding that the Department of Interior has appealed the decision as to the eligibility of some of the villages involved in this agreement. Isn't it premature at this time to convey lands until this is resolved?

6. D2 lands identified in Section III of the Cook Inlet Trade are

being conveyed to the State to protect fish and game values. Wouldn't the D2 classification provide the same protection? In the event the land did not get put into the D2 status, the lands would still be selectable by the State.

7. If the trade is desirable maybe the State should wait for the CIRI to get title to their lands, and then make a 2-way, rather than a 3-way exchange. This way the State would acquire only what it really needs.

8. The land the State is to receive in the Kamishak Bay area does not include the existing overland route to Lake Illiamna. I am not aware of the significance of State ownership to these mountainous lands, a R/W would probably be sufficient.

9. Does this agreement void out the requirement that the region must select the odd - odd - even - even townships in the 11(a)(1) withdrawal for the Chickaloon area? The agreement in Section IV states that these conveyances constitute CIRI full entitlement. This is a Bureau of Land Management problem.

10. From Bureau of Land Management concerns, I do not believe there are any valid 12(a) selections in the Talkeetna Mountain area where 4.5 townships of 12(b) selections are to be made available. Or does this agreement validate what the Bureau of Land Management considers to be invalid selections in that area? This again is a Bureau of Land Management problem.

11. It appears that the CIRI selection process can extend up to May 18, 1979.

12. Does this agreement really consolidate land ownership patterns for which the state is trying to accomplish?

13. Appendix C-3 identifies lands in an amount equal to 1/4 of the acreage entitlements. Is this acreage pool in addition to the five acreage pools identified in Appendix C-1 A thru E?

14. Do acreage entitlements under these terms and conditions conflict with the out-of-court settlement agreement between the Secretary and the Governor dated September 1, 1971? Is so what prevails?

15. Even though the State receives 2.5 times the acreage it is giving up, is it an equal value deal for the State?

16. How do we arrive at equal values? Is it possible to determine dollar values when such large acreage are involved and the subsurface minerals are unknown? Did the legislature intend that exchanges of this magnitude not include a documented formal appraisal?

17. A selection pool for CIRI is to be made up from federal surplus property, power sites and other reserves with certain exclusions.

But how about if the Eagle River Powersite withdrawal was included? These lands lie within the Chugach State Park boundary. The State would like to have the opportunity to include these lands in the State Park. There are other withdrawals that have simular impacts.

18. Federal lands at Point Woronzof, Point Campbell, Goose Lake and Campbell Tract are to be reserved by the United States for early conveyance to the State for park and recreation purposes. (See attached). This would then include the lands necessary for expansion of the North-South runway at Anchorage International Airport. Would the park and recreation restriction then preclude construction of this runway? Enlargement of the sewage treatment plant may also be effected. These lands are within 2 miles of the Anchorage City limits and would not have been selectable by CIRI regardless of the exchange agreement.

19. There is a surveyed school section 36 within the Campbell Tract. If this Section is conveyed under the Recreation and Public Purposes Act, is the Permanent School Endowment Fund precluded from revenues from what was originally authorized? If this removes the School Section identity, then the States appeal to the Interior Board of Land Appeals may be weakened regarding the school sections within the Tongass National Forest that have been selected by some of the Southeast native villages.

20. I have represented the State in working on a land use plan for the Campbell Tract. This process has been continuing for the last 10 months. Conveyance of the Tract under the Recreation and Public Purposes Act will serve the public interest as long as the Far North Bicentennial Park master development plan remains flexible enough to provide for revisions to meet the community needs. In all probability these lands would have remained available for state selection.

21. The Attorney Generals office has on different occasions provided the Division of Lands with opinions regarding the transfer of state land. Regardless of the granting authority, the processes of AS 38.05 pertaining to review and discussion (AS 38.05.305), appraisal (AS 38.05.310), public notice (AS 38.05.345) and the mineral reservation (AS 38.05.125) are required. If the State legislature is going to approve this land exchange, it would be most expedient if remedial legislation could be included to void the necessity of these actions for the instance. It seems nonsensical to me if we must review and discuss the land parcels to conveyed to the Bureau of Land Management if the local planning authorities do not have a veto power. The same question can be raised in regard to appraisal. If the legislature determines this is an equal value exchange, why perform an appraisal. Compounding the appraisal problem is the impossibility to determine the fair market value of large blocks of land or the mineral estate value of unknown mineral quanities. Public Notice as required in AS 38.05.345 will also serve little purpose if the legislative directive is to exchange the land. In order to clear the hurdle involving the mineral reservation legislative relief is required.

From the standpoint of Division regulations, all lands, except for minerals disposal, must be classified (11 AAC 52). This again is a papermill exercise if the legislature gives the direction to make the exchange.

22. What is the action the legislature must take? Must you give approval to the exchange in its entirety, reject it in its entirety or can you approve it with modifications? Even though a side agreement may be possible between the State and CIRI, there are problems with the State and Federal involvement that will not be cured.

23. If action is taken to approve the exchange, a fiscal note would be in order. With the complex tracking that will be required, several people will be spending 100% of their time on implementation of the exchange. A major impact on expense will be the amount of work required as listed in item 21 above.

Respectfully submitted,

Dale P. Tubbs
Deputy Director
Alaska Division of Lands

Attachments

appropriation, funds necessary to carry out its functions under this section. (§ 4 ch 70 SLA 1972)

Editor's note. — Prior to the 1973 relocation of this chapter, this section appeared as AS 38.15.050.

Section 1, ch. 70, SLA 1972, provides: "Purpose. It is the purpose of this Act to implement the Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688; 43 U.S.C. 1601 et seq.) by amending state law to resolve those ambiguities, conflicts and problems directly or impliedly created by the enactment by Congress of the Alaska Native Claims Settlement Act. It is also the purpose of this Act to complement through state policy, in a reasonable and fair manner, the federal policy expressed in that Act."

Legislative committee report.—For report on ch. 70, SLA 1972 (CSHB 731), see 1972 House Journal, p. 837.

Sec. 38.95.060. Exchange of land. (a) With the consent of the governor, a corporation organized under Alaska law pursuant to the federal Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688; 43 U.S.C. 1601 et seq.) which would otherwise be entitled to select land within the area withdrawn by sec. 11(a)(1)(A) and (B) of the federal Act, which, however, has been selected by and patented to the state before December 18, 1971, may obtain up to 23,040 acres of this land, if it has not been disposed of or developed, by exchanging land or interests in land with the state.

(b) An individual Native (as defined in the federal Act) or a corporation referred to in (a) of this section may exchange land or an interest in land with any other individual Native or corporation referred to in (a) of this section or the state for the purpose of effecting land consolidations or to facilitate the management or development of the land.

(c) Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged. (§ 4 ch 70 SLA 1972)

Editor's note. — Prior to the 1973 relocation of this chapter, this section appeared as AS 38.15.060.

Legislative committee report.— For report on ch. 70, SLA 1972 (CSHB 731), see 1972 House Journal, p. 837.

January 15, 1978, to create a selection pool which shall consist of all the following lands, within the exterior boundaries of the Cook Inlet Region, now in existence or hereafter coming into existence by January 15, 1978:

(i) abandoned or unperfected public land entries, provided however, that the United States shall not be obligated to initiate any adversary proceedings other than an adjudication by the BLM to determine if such entries are abandoned or unperfected, and the burden of identifying such lands shall be on CIRI;

(ii) federal surplus property;

(iii) revoked federal reserves;

(iv) cancelled or revoked power site reserves, with the exception of the Bradley Lake reserve, reserves in the Lake Clark proposal, and the Chakachamna Lake reserve, if any are ever cancelled or revoked;

(v) public lands created by the reduction of federal installations as defined in Section 3(e) of ANCSA, except that, if such lands are within a Section 11(a)(1) withdrawal area, they shall be subject to prior Village Corporation selections properly filed prior to December 18, 1975; and

(vi) any other federal lands as agreed by the State the Region and the Secretary, including but not limited to lands withdrawn under Section 17(d)(1) of ANCSA and not withdrawn for any other purpose.

The Secretary shall notify CIRI after any above-described lands have been placed in the pool. With the concurrence of CIRI, the State and any other concurrence that may be required under paragraph I-C(1)(e) of this Document, the Secretary may, in his discretion, contribute to such pool properties of one or more of the foregoing categories from without the boundaries of the Cook Inlet Region, provided that properties described in subparagraphs (2)(a)(ii) and (2)(a)(iii) of this paragraph shall be removed from the pool if not selected by CIRI within 90 days after the Secretary notifies CIRI that such properties have been placed in the pool or valued by the Secretary in Subparagraph 2(e) of this document whichever date is later.

(b) The State shall be advised of all properties located within the exterior boundaries of Cook Inlet Region to be placed in the pool described in subparagraph 2(a) and may require Secretarial consultation with the Joint Land Use Planning Commission with respect to any specific piece of property so included, except those in subparagraph 2(a)(i) hereof, to determine whether private ownership of such property would be incompatible with reasonable land-management principles; provided, that the Secretary shall not be bound by any recommendation of the Joint Land Use Planning Commission. The Secretary shall notify the State, CIRI and the Commission of his decision in writing. The State may conclusively object to the inclusion in the pool of up to 1,500 of the acres, described in paragraph 2(a)(i) and 2(a)(iv), and additional lands within these two categories may be excluded from the pool upon replacement by the State with lands of equal values. Lands not included in the pool as result of the State's conclusive objection or which have been replaced by the State under this subparagraph shall, immediately upon their exclusion or replacement from the pool thereby, be made available by the Secretary to the State for selection under the Alaska Statehood Act for a period of 90 days to the exclusion of all competing claims or parties.

(c) Unless specifically excepted by the Secretary, all tracts of land and improvements thereto in said pool shall be appraised by one or more appraisers mutually agreeable to CIRI and the Secretary.

(d) CIRI shall be entitled to select any tract of land from said pool in exchange for its out-of-Region selection rights, in part or in whole and *pro tanto*, in satisfaction thereof, in the following manner:

(1) any tract of land and improvements thereto specifically excepted from appraisal by the Secretary as described in subparagraph (c) of this paragraph may be exchanged acre for acre;

(2) any tract of land and improvements thereto valued by CIRI and the Secretary, after review of the appraisals, at less than $500 per acre at fair market value may be exchanged acre for acre;

(3) any tract of land and improvements thereto valued by CIRI and the Secretary, after review of the appraisals, at $500 per acre or more at fair market value shall be exchanged as follows:

(i) for each acre of land in said tract, each valued increment of $500 or proportion thereof shall be considered an acre of land or proportion thereof, in the same proportion, hereinafter called an "acre/equivalent"; and

(ii) any acre/equivalents may be exchanged for any acres of CIRI's out-of-region entitlement.

(e) Anything in the foregoing provisions notwithstanding, the selection pool created hereunder shall not include or affect lands within the Point Woronzof, Point Campbell, Goose Lake, and Campbell tracts, to which CIRI waives any claim which it may have had; and such lands shall be reserved by the United States for early conveyance to the State for park and recreation purposes as an integral part of the consideration for this Document.

(f) The Secretary shall utilize his best efforts to maximize the pool through the use of all available properties within the described categories in order to enhance the opportunity for the land exchanges described herein. If, by January 15, 1978, the Secretary and the General Services Administrator have not identified for the pool at least 138,240 acres, or acre/equivalents of lands within the exterior boundaries of Cook Inlet Region, the Secretary shall add to the pool an amount equal to the difference between 138,240 acres, or acre/equivalents, and the number of acres so identified from the following:

(1) with the consent of the State, lands located within the boundaries of the Region, withdrawn for the purposes of section 17(d)(1) of ANCSA, and valued by the Secretary and CIRI at $200 per acre, or more.

(2) with the consent of the State and CIRI, lands described in subparagraph I-C(2)(a) of this Document from without the exterior boundaries of Cook Inlet Region.

CIRI must select all lands in the pool located within the Region which are valued by the Secretary and CIRI at $200 per acre, or more, until CIRI has selected 138,240 acres, or acre/equivalents as described in subparagraph 3(i) of this paragraph.

57-000—75——6

BLM Alaska

February 9, 1976

Briefing Statement

CAMPBELL TRACT AS AFFECTED BY

PUBLIC LAW 94-204

The Act of January 2, 1976 (PL 94-204), an amendment to ANCSA, has the following effects on Campbell Tract.

1. After ratification of the Act by the Alaska State Legislature, the Campbell Tract lands can transfer to the State of Alaska, but not before December 18, 1976.

2. The lands will transfer under the procedures of the Recreation and Public Purposes Act (44 Stat. 741) without consideration or the 640 acre limit, and must be used for public parks, recreation, and public purposes.

3. Use and development will be in accordance with the "Generalized Land Use Plan" as outlined in the September 1974 Greater Anchorage Area Borough Far North Bicentennial Park Master Plan.

4. BLM may reserve up to 1000 acres within the Tract for present needs.

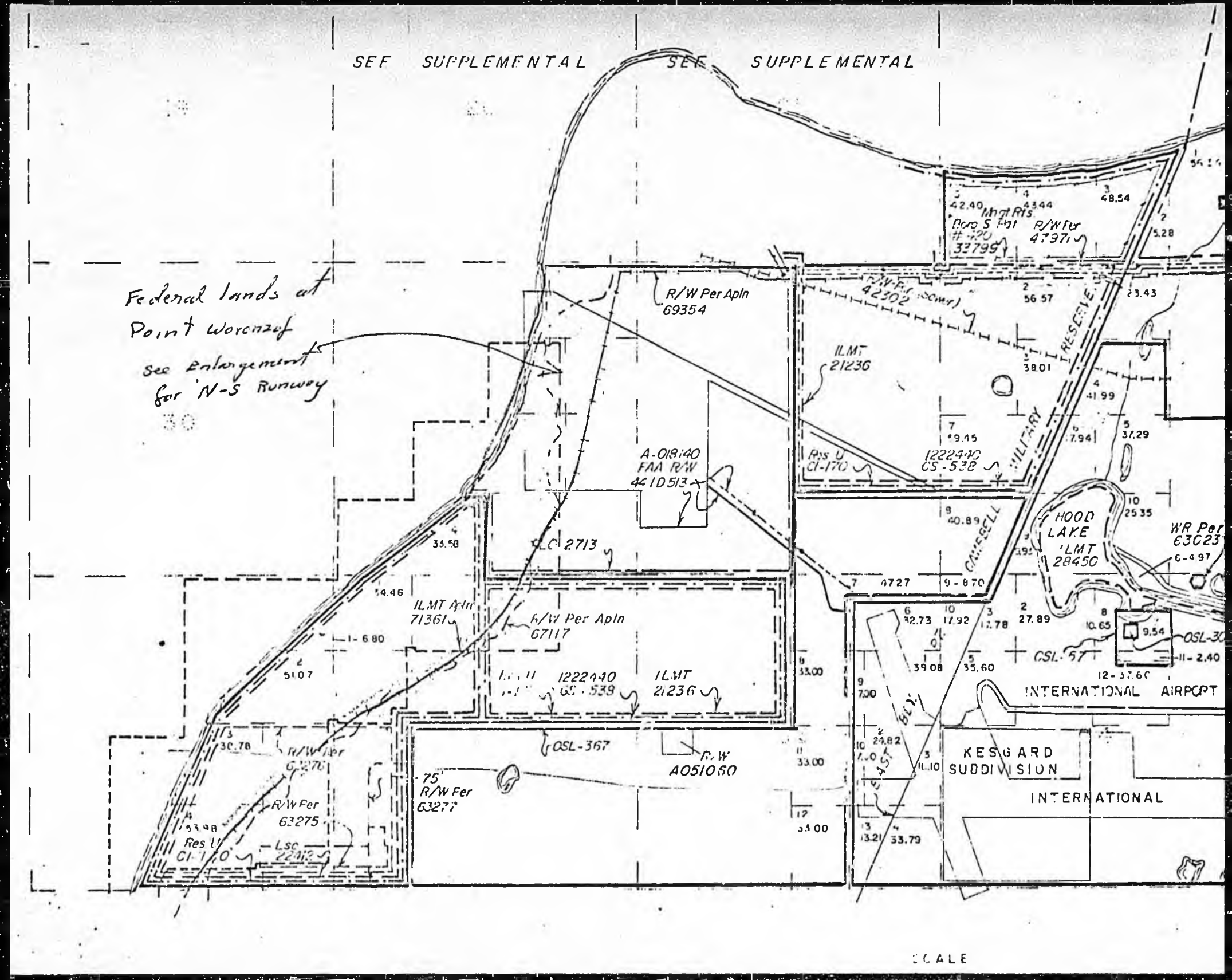
5. Present valid and existing rights within the Tract will continue (State Highways, National Guard, City water well permits, Chugach Electric rights-of-way, etc.)

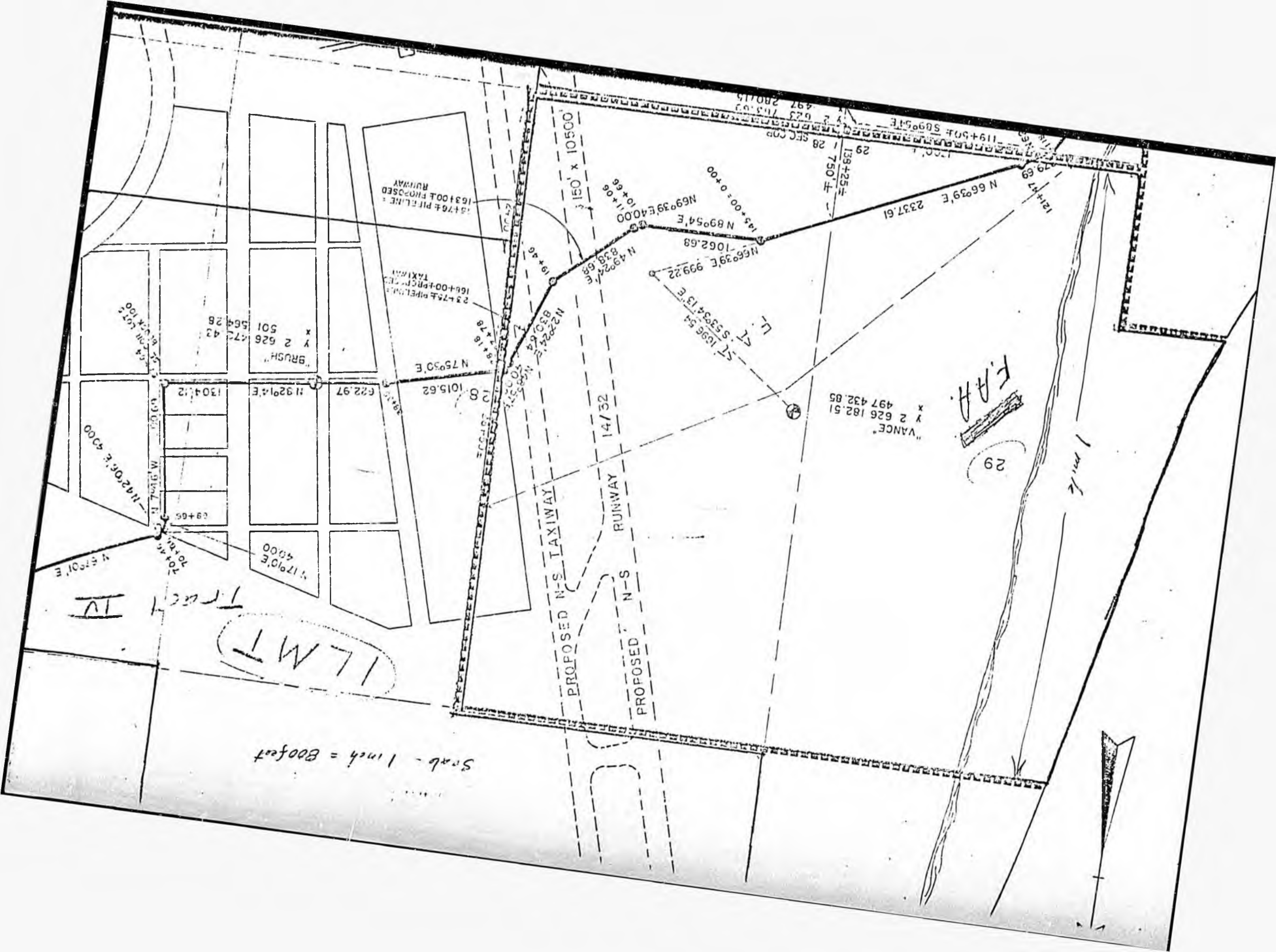
Significant acreages within the 5120 acre area known as Campbell Tract which will not transfer under this act are:

BLM	- 1000 acres
State Highways	- 40 acres
National Guard	- 50 acres
Total	1090 acres

6. The Act does not specify that Campbell Tract will ultimately be transferred to Anchorage for management and development, but this has been the long range goal and is still a valid precept.

7. A slightly revised generalized land use plan by the State, City, and BLM is in draft stages. Upon public exposure, finalization and acceptance by the State, City and BLM, the revised plan may be used to replace the Borough plan as the covenant in the land transfer.


SEE SUPPLEMENTAL
SEE SUPPLEMENTAL
Federal lands at Point Woronzof see Enlargement for N-S Runway
R/W Per Apln 69354
ILMT 21236
A-018140 FAA R/W 4410513
CL 2713
ILMT Apln 71361
R/W Per Apln 67117
1222440 CS-538
ILMT 21236
OSL-367
R/W A051060
75' R/W Per 63271
R/W Per 63275
Res U CI-170
Lse 22012
R/W Per 42302
Res U CI-170
1222440 CS-538
MILITARY RESERVE
CAMPBELL
HOOD LAKE ILMT 28450
OSL-57
INTERNATIONAL AIRPORT
KESGARD SUBDIVISION
INTERNATIONAL
BLVD
SCALE


PROPOSED N-S TAXIWAY
PROPOSED N-S RUNWAY
"VANCE"
"BRUSH"
FAA
29
14/32
N 66°39'E 2337.61
N 89°54'E
N 75°50'E
N 66°39'E 1062.68
N 66°39'E 999.22
N 49°22'E 838.68
N 22°24'E 830.64
S 53°34'13"E 1596.54
Scale - 1 inch = 800 feet

Article 10. Parks and Recreation Areas.

Section
295. Parks and recreation areas

Sec. 38.05.295. Parks and recreation areas. The commissioner shall establish a policy and prescribe rules and regulations by which parks and recreation areas, including public scenic overlooks and cultural sites, shall be developed and managed in a manner that will best serve the interests of the people of the state. The commissioner may classify public lands as parks, scenic overlooks, cultural sites and recreation areas as long as the general intent of this chapter is maintained. (§ 1 art XII ch 169 SLA 1959)

Am. Jur. and ALR references.—39 Am. Jur., Parks, Squares and Playgrounds, § 1 et seq.; 42 Am. Jur., Public Lands, § 1 et seq.

Uses to which park property may be devoted; power of legislature or state officers, 18 ALR 1266; 63 ALR 492; 144 ALR 509.

Article 11. Miscellaneous Provisions.

Section
300. Classification of lands
305. Review
310. Notice and appraisal
315. Public and charitable use
320. Occupied tidelands and submerged lands
325. Homestead entry
330. Permits
335. Deposits
340. Assignment
345. Notices
347. Transfer of state land to cities
348. Grants of land after natural disaster
349. Disposition of state land for flood control projects

Sec. 38.05.300. Classification of lands. The director shall make a preliminary classification for surface use of all lands in areas where he considers it necessary and proper for future development. The classification, together with a land use plan, shall be transmitted to the commissioner for his approval, modification, or rejection. This section does not prevent reclassification of lands where the public interest warrants reclassification, nor does it preclude multiple purpose use of lands whenever different uses are compatible. No state land, water, or land and water area shall, except by act of the state legislature, be closed to multiple purpose use, if the area involved contains more than 640 acres. (§ 1 art III ch 169 SLA 1959; am § 2 ch 31 SLA 1961)

Cross reference.—As to state land and water restricted to use as public recreation areas and state parks, see AS 41.20; ch. 26, SLA 1967, Temporary and Special Acts, which creates the Chena River Recreation Area; ch. 61, SLA 1966, Temporary and Special Acts, which creates the Nancy Lake State Recreation Area.

See AG letter of 4/23/75

Sec. 38.05.305. Review. Except for land disposed of under §§ 315—325 of this chapter, no land in or adjacent to an incorporated municipality or other organized community may be sold or leased, or a renewal lease issued, until the proposed use of the land has been studied and reviewed jointly by the director and local authorized planning agencies. (§ 2 art III ch 169 SLA 1959)

Sec. 38.05.310. Notice and appraisal. No land may be sold or leased, or a renewal lease issued without public notice, except in the case of an oil or gas or mineral lease, unless it has been appraised within 90 days before the date fixed for the sale or lease. When land is offered at public sale but is not sold and is available at private sale, no reappraisal is required unless the director considers that a change in value of the lands may have occurred. A grazing lease may be granted to a lessee of federal grazing lands without prior appraisal, if his federal lease was cancelled to allow the state to select the lands under lease. No land may be sold or leased for less than the approved, appraised market value, except as provided in §§ 315 and 320 of this chapter and §§ 75—85 of this chapter. (§ 3 art III ch 169 SLA 1959; am § 5 ch 61 SLA 1960)

Sec. 38.05.315. Public and charitable use. (a) The lease, sale, or other disposal of state land or resources may be made to a state or federal agency or political subdivision, or the lease, sale, or other disposal of coal deposits suitable for mining may be made to a utility owned and operated by a government agency or nonprofit cooperative association organized to participate under the Federal Rural Electrification Act for the purpose of generating electric power and energy or the production of process steam, or both, for less than the appraised value as determined by the director and approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration given to the nature of the public services or function rendered by the agency, subdivision, or utility making application, and of the terms of the grant under which the land was acquired by the state.

(b) Notwithstanding §§ 70—80, 95, and 100 of this chapter the director, upon application filed by an applicant eligible under (b)—(d) of this section, may, by negotiation and without public auction in the manner prescribed in (b)—(d) of this section, lease state land for a term of not more than 55 years. Before leasing, the director shall prepare a land use plan and a land classification to insure that the proposed use is compatible with area utilization. Before the land may be leased under (b)—(d) of this section, it must be shown to the satisfaction of the director that the land is to be used for an established or definitely proposed project, and that the eligible applicant has the financial ability to carry out the project. The commissioner may establish limitations on the acreage which may be leased under (b)—(d) of this section to an applicant.

(c) Eligible applicants under (b)—(d) of this section are

sustained yield principle, subject to preference among other beneficial uses. The director may negotiate sales of timber or materials without advertisement and on the limitations, conditions, and terms which he considers are in the best interests of the state, subject to the approval of the commissioner. However, not more than 500 M.B.M. of timber or more than $2,500 of materials may be sold by nonadvertised, negotiated sale to the same purchaser within a one-year period.

(b) Negotiated sales for timber or materials not exceeding a value of $250 are exempt from the provisions of AS 34.15.150. (§ 2 art VI ch 169 SLA 1959; am § 1 ch 66 SLA 1969)

Sec. 38.05.120. Disposal procedure. Timber and other materials shall be sold either by sealed bids or public auction, depending on which method is determined by the commissioner to be in the best interests of the state, to the highest qualified bidder as determined by the director. An aggrieved bidder may appeal to the commissioner within five days after the sale for a review of the director's determination. The sale shall be conducted by the director or his representative, and at the time of sale the successful bidder shall deposit the amount specified in the terms of sale. The means by which the amount of deposit is determined shall be prescribed by appropriate regulation. The director or his representative shall immediately issue a receipt containing a description of the timber or materials purchased, the price bid, and the terms of sale. The receipt shall be acknowledged in writing by the bidder. A contract of sale, on a form approved by the attorney general, shall be signed by the purchaser and, following the approval of the commissioner, the contract shall be signed by the director on behalf of the state. The director, with the approval of the commissioner, may impose conditions, limitations, and terms which he considers necessary and proper to protect the interests of the state. Violation of any provision of this chapter or the terms of the contract of sale subjects the purchaser to appropriate legal action. (§ 3 art VI ch 169 SLA 1959; am § 13 ch 61 SLA 1960; am § 3 ch 137 SLA 1962; am § 1 ch 200 SLA 1970)

Article 5. Reservation of Rights to Alaska.

Section 125. Reservation

Section 130. Damages and posting of bond

Sec. 38.05.125. Reservation. Each contract for the sale, lease or grant of state land, and each deed to state land, properties or interest in state land, made under §§ 315—325 of this chapter or §§ 45—120 of this chapter, except for those lands originally acquired by purchase, exchange, condemnation, gift, escheat or foreclosure are subject to the following reservations: "The party of the first part, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, drilling, and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved." (§ 1 art VII ch 169 SLA 1959; am § 14 ch 61 SLA 1960; am § 1 ch 42 SLA 1966)

Legislative committee report.—For report on ch. 42, SLA 1966 (HB 387 am), see 1966 House Journal, p. 492.

Sec. 38.05.130. Damages and posting of bond. No rights shall be exercised by the state, its lessees, successors or assigns under the reservation as set out in § 125 of this chapter or until the state, its lessee, successors, or assigns make provisions to pay to the owner of the land full payment for all damages sustained by the owner, by reason of entering upon the land. If the owner for any cause refuses or neglects to settle the damages, the state, its lessees, successors, assigns, or an applicant for a lease or contract from the state for the purpose of prospecting for valuable minerals, or option contract or lease for mining coal or lease for extracting petroleum or natural gas, may enter upon the land in the exercise of the reserved rights after posting a surety bond determined by the director, after notice and an opportunity to be heard, to be

PART 6. LANDS

Chapter

52. Land Planning and Classification
54. Disposal of Lands
56. Homesteading
58. Leasing of Lands
60. Grazing Leases
62. Tide and Submerged Lands
64. Shore Fisheries Leasing
68. Land Platting and Vacating
72. Water Use
76. Timber and Material Sales
80. Pipeline Right-of-Way Leasing
82. Mineral Leasing Procedure
83. Oil and Gas Leasing
84. Other Leasable Minerals
86. Mining Rights
88. Practice and Procedure
92. Forest Protection
96. Miscellaneous Land Use
98. General Provisions (no regulations filed)

CHAPTER 52. LAND PLANNING AND CLASSIFICATION

Section

10. Short title
20. Unclassified lands
30. Classification
40. Agricultural lands
50. Commercial lands
60. Grazing lands
70. Industrial lands
80. Material lands
90. Mineral lands
100. Public recreation lands
110. Private recreation lands
120. Residential lands
130. Reserved use lands
140. Timber lands
150. Utility lands
160. Watershed lands
170. Resource management lands
180. Open-to-entry lands
190. Reclassification
200. Multiple use
210. Preparation of plan
220. Definitions

11 AAC 52.010. SHORT TITLE. This chapter pertains to the classification of lands of the State of Alaska under the jurisdiction of the Division of Lands, Department of Natural Resources, and related matters. The intent of this chapter is to establish a system of land classification which will encourage the maximum development and utilization of all of Alaska's land resources consistent with the public interest. This chapter may be referred to as the "Land Planning and Classification Regulations." (Eff. 7/1/60, Reg. 1; am 5/23/64, Reg. 16)

Authority: AS 38.05.020
AS 38.05.300
AS 41.20.020

11 AAC 52.020. UNCLASSIFIED LANDS. All lands shall, upon transfer to the state's jurisdiction, be unclassified in status. The disposal of minerals only shall be permitted on unclassified lands. All other disposals of lands and resources shall be permitted only after the lands have been classified. (Eff. 7/1/60, Reg. 1; am 5/23/64, Reg. 16)

Authority: AS 38.05.020
AS 38.05.300
AS 41.20.020

11 AAC 52.030. CLASSIFICATION. Lands shall be classified into one or more of the following categories: agricultural lands, commercial lands, grazing lands, industrial lands, material lands, mineral lands, private recreation lands, public recreation lands, reserved use lands, residential lands, timber lands, utility lands, watershed lands, resource management lands or open-to-entry lands.

Classification shall become effective upon the noting of such classification upon the public records maintained by the division.

The classification of lands as agricultural lands, commercial lands, industrial lands, private recreation lands, public recreation lands, reserved use lands, residential lands, watershed lands, resource management lands or open-to-entry lands shall close said lands to the removal of minerals therefrom, except upon the issuance of a mineral or mining lease or permit for such removal. No classification, however, shall preclude the disposal of timber and materials unless deemed inconsistent with the

Alaska State Legislature

Senate

JUNEAU, ALASKA

March 4, 1976

MEMORANDUM

TO: ALL MEMBERS

FROM: SENATOR KAY POLAND

We have received copies of the Complaint and Memorandums filed against the Cook Inlet Land Trade in Anchorage Superior Court, and they are hereby transmitted for your information.

These documents, together with the comments of Dave Jackman and Michael Smith, sent you earlier, should give you a reasonable resume of the basic issues.

The earlier packet contained a transcript of the Anchorage testimony plus written material received since that date. Tapes of the Juneau testimony are available but not transcribed because of repetition.

The entire matter will be calendared early next week. The Senate Resources Committee has endeavored to secure testimony from every source for your information.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

J. R. LEWIS and HAROLD H. GALLIETT, JR., Citizens and Taxpayers of the State of Alaska,

Plaintiffs,

vs.

STATE OF ALASKA; GOVERNOR JAY HAMMOND; GUY R. MARTIN, Commissioner of Natural Resources; MICHAEL C. T. SMITH, Director, Division of Lands,

Defendants.

No. 76-1608

COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

Plaintiffs, HAROLD H. GALLIETT, JR. and J. R. LEWIS, citizens and taxpayers of the State of Alaska, pursuant to Alaska Civil Rule 23, and on behalf of all citizens and taxpayers of the State, complain and allege as follows:

COUNT ONE

I

Plaintiffs have been and now are residents, citizens and taxpayers of the State of Alaska and reside in Anchorage, Alaska. Defendants are the State and its Governor, Commissioner of Natural Resources and Director of Division of Lands.

II

Plaintiffs are commencing this action in order to permanently enjoin the state from participating in an exchange of lands involving the alienation of subsurface mineral rights belonging to all the people of the State of Alaska. This

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3rd AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-9477

attempted alienation is in violation of the Constitution of the United States, the Constitution of the State of Alaska, the Alaska Statehood Act, and Title 38, Alaska Statutes.

III

In 1955 the then Territory of Alaska, through its legislature, provided for a constitutional convention. Elected delegates adopted a constitution on February 5, 1956 which was ratified by the people of Alaska on April 24, 1956.

IV

This constitution adopted by the people of Alaska served as a basis for subsequent petitions to Congress for statehood and constituted an offer to accept the privileges and responsibilities of that status in accordance with the terms of said constitution.

V

Article VIII, Section 9 of the Constitution of the State of Alaska provided in part as follows:

> Section 9. Sales and Grants. Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources.

VI

Two years after the people of Alaska adopted the above constitutional provisions, Congress passed the Alaska Statehood Act, approved on July 7, 1958. Sec. 6(i) of the Statehood Act is a direct response by Congress to the provisions contained in Article VIII, Sec. 9 of the Alaska Constitution set forth above. The Alaska Statehood Act stated in this section as follows:

> All grants made or confirmed under this Act shall include mineral deposits. The

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-6477

> grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, ...

Sec. 6(i) of the Act further provided that any lands or minerals disposed of by the State of Alaska contrary to the provisions of the above section would be forfeited to the United States by appropriate proceedings instituted by the Attorney General.

VII

By Public Law 92-203, 85 Stat. 688, approved December 18, 1971, Congress enacted the Alaska Native Claims Settlement Act. This Act provided for the fair and just settlement of all claims by native groups in Alaska based upon their aboriginal land claims. All prior conveyances of public land pursuant to federal law and all tentative approvals pursuant to Sec. 6(g) of the Alaska Statehood Act were declared to be an extinguishment of the aboriginal title of Alaska natives. The Act further provided for 12 geographic regions within the State and for appropriate regional native corporations which were given the right to select land and share in the revenues from the sale of minerals. Sec. 12 of the Alaska Native Claims Settlement Act provided for the selection of land by each village corporation within the township in which the village is located, plus an area that would make the total selection equal to the acreage to which the village was entitled under Sec. 14 of the Act.

VIII

Because of existing federal withdrawals, state land selection and other non-native settlement patterns within the Cook

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3rd AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-3477

Inlet region, Cook Inlet Region, Inc., a native corporation, was not able to select lands which it considered of like and similar character under the formula established by the Alaska Native Claims Settlement Act. For approximately three years following the enactment of this Act, Cook Inlet Region, Inc. negotiated with the Secretary of the Interior in an attempt to insure its land selection of a similar and like character.

IX

Cook Inlet Region, Inc. was dissatisfied with these negotiations with the United States Department of the Interior, and it filed suit in a District Court. Negotiations continued, however, and the solicitor for the Department of Interior made an offer to convey to Cook Inlet Region, Inc. ten surface and fifteen subsurface townships within the Kenai National Moose Range, including the Swanson River oilfield, as well as additional federal lands in the then Greater Anchorage Area Borough. These lands included land at Point Woronzof, Point Campbell, and a sizable portion of the Campbell air strip tract. Cook Inlet Region, Inc. declined this offer and it was later withdrawn by the Department of the Interior.

X

The United States District Court ruled in favor of the Secretary of the Interior and against Cook Inlet Region, Inc. in February of 1975. Pending the appeal of the case to the Ninth Circuit Court of Appeals, Cook Inlet Region, Inc. appealed to Congress for legislative relief. Despite the fact that Cook Inlet Region problems were solely with and concerning the federal government and federal land, the State entered into the negotiations in an attempt to help solve the problems between the Cook Inlet Region and the federal government.

RAYMOND A. NESBETT
ATTORNEY AT LAW
657 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-3477

X

The United States District Court ruled in favor of the Secretary of the Interior and against Cook Inlet Region, Inc. in February of 1975. Pending the appeal of the case to the Ninth Circuit Court of Appeals, Cook Inlet Region, Inc. appealed to Congress for legislative relief. Despite the fact that Cook Inlet Region problems were solely with and concerning the federal government and federal land, the State entered into the negotiations in an attempt to help solve the problems between the Cook Inlet Region and the federal government.

XI

The State, Cook Inlet Region, Inc., and the Department of the Interior entered into the negotiations concerning the exchange of lands pursuant to Sec. 22(f) of the Alaska Native Claims Settlement Act which provided as follows:

> The Secretary, the Secretary of Defense, and the Secretary of Agriculture are authorized to exchange any lands or interests therein in Alaska under their jurisdiction for lands or interests therein of the Village Corporations, Regional Corporations, individuals, or the State for the purpose of effecting land consolidations or to facilitate the management or development of the land. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.

XII

Pursuant to the exchange provisions cited above, the State volunteered the trade of various patented lands to the Department of the Interior for exchange and grant to the Cook Inlet Region, Inc. The terms of the settlement were, in summary, that the State of Alaska obligated itself to convey lands to the United States for exchange with Cook Inlet Region, Inc. in accordance with "Terms and Conditions for Land Consolidation and Management in Cook Inlet Area" made a part of the report from

RAYMOND A. NESBETT
ATTORNEY AT LAW
937 WEST 3rd AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0477

the Committee on Interior and Insular Affairs accompanying HR 6644, the amendment to the Alaska Native Claims Settlement Act. Further, Cook Inlet Region, Inc. was to dismiss its lawsuit in the case of Cook Inlet v. Kleppe, 75-2232, Ninth Circuit Court of Appeals; and other native village selections under Sec. 12 of the Settlement Act concerning lands within Lake Clark, and other areas outside the Cook Inlet Region, Inc., would be withdrawn to enable the exchange to take place by substituting land outside Cook Inlet region. These terms are summarized in Sec. 12(a) of Public Law 94-204, known as Alaska Native Claims Settlement Act Amendments, approved January 2, 1976. Sec. 12(f) of the Amendments states that all conveyances of lands made or to be made by the State of Alaska in satisfaction of the Terms and Conditions "shall pass all of the state's right, title, and interest in such lands, including the minerals therein, as if those conveyances were made pursuant to Sec. 22(f) of the Settlement Act."

XIII

Sec. 17 of the Amendment purports to amend Sec. 22(f) of the Alaska Native Claims Settlement Act by stating that in any exchange made pursuant to Sec. 22(f), the State may convey its lands, "free of the restrictions of Sec. 6(i) of the Alaska Statehood Act."

XIV

In the "Terms and Conditions" contained within the report accompanying HR 6644, Sec. II at P. 42, the State of Alaska was asked to give its consent to the exchange and settlement agreement within sixty days of the commencement of the 1976 session of the Alaska State Legislature. Upon such consent being given, the State of Alaska is bound to convey to the United States for reconveyance to Cook Inlet Region, Inc. the lands set forth

RAYMOND A. NESBETT
ATTORNEY AT LAW
627 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0477

within the "Terms and Conditions." Plaintiffs allege on information and belief that said consent must be given, if at all, prior to March 12, 1976.

XV

In an attempt to implement Sec. 22(f) of the Alaska Native Claims Settlement Act, the Alaska legislature, in 1972, enacted what is now Sec. 38.95.060 Alaska Statutes which authorizes the exchange of state land with a native corporation "with the consent of the governor," when the purpose is to effect land consolidations or to facilitate the management or development of the land. Similar to ANCSA, Sec. 22(f), the Alaska Statute provided that exchanges shall be on the basis of equal value, with either party being allowed to accept or pay cash in order to equalize the value of the properties exchanged.

XVI

The governor and the State, through its Commissioner of Natural Resources and Director of the Division of Lands, is proposing to give away large parcels of land and is also proposing to convey the subsurface mineral rights in such a manner as would convey all the coal, oil and gas resources of the lands. The State is proposing to give away the following estimated resources:

Present value of coal	$4,732,000,000
Minimum probable present value of oil and gas	62,500,000
Present value of surface estate	451,695,000
TOTAL	$5,246,195,000

The State proposes to receive the following estimated value as a result of the exchange:

Present value of surface estate	165,917,440

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 2ND AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-3477

From the above summary of the exchange values, the net result to the State of Alaska is as follows:

Net loss $5,080,187,560

XVII

The proposed conveyance violates the Alaska Constitution and its compact with the federal government through the Alaska Statehood Act. The Alaska Constitution and the Alaska Statehood Act prohibit any conveyances, deeds, grants or sales of state lands without reservations to all the people of the State of the mineral rights contained therein.

XVIII

The exchange of land as proposed by the Hammond Administration fails to effect land consolidations or to facilitate the management or development of the land as required by A.S. 35.95.060.

XIX

There is no adequate remedy at law for plaintiffs and the taxpayers and citizens of the State of Alaska to effect redress should this illegal conveyance take place. Damages could be astronomical for the replacement of the values of the coal, oil and gas reserves and resources. In any event, damages would have to come from the treasury of the State of Alaska, which consists of assets already owned by the people of the State. If this proposed exchange is not permanently enjoined, the plaintiffs and other citizens and taxpayers of the State of Alaska will suffer irreparable harm on the magnitude of billions of dollars in lost resources.

COUNT TWO

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0477

II

Article VIII, Sec. 9, Constitution of the State of Alaska, subject to the reservation to the State of all resources, allows the Legislature to provide for the sale or grant of state lands, or interests therein, and specifically allows for the establishment of sales procedures.

III

Pursuant to this constitutional authority, the Alaska legislature in Sec. 38.05.045, Alaska Statutes, provided in part as follows:

> All lands owned in fee by the state or to which the state may become entitled, excepting tide, submerged or shorelands, and timber or grazing lands, may be sold as provided in §45-69 of this chapter.

IV

Sec. 38.05.055, Alaska Statutes, states in part as follows:

> Except as provided in §315(d) of this chapter, the sale shall be made at public auction to the highest qualified bidder as determined by the director.

Sec. 38.05.125 A.S. states that each contract for the sale, lease or grant of state land, and each deed to state land, properties or interest in state land, made under Sec. 315-325 of this chapter or Sec. 45-120 of this chapter, . . . is subject to the reservation that the State of Alaska "expressly saves, excepts, and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind or description, ..."

VI

Sec. 38.05.310, Alaska Statutes, states that no land may be sold or leased for less than the approved, appraised market value.

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 2nd AVENUE
ANCHORAGE, ALASKA 99501
Telephone (907) 272-3477

VII

If Sec. 38.05.125, Alaska Statutes, providing for the reservation to the State of all mineral rights, is not in violation of Article VIII, Sec. 9, Constitution of Alaska, the reservation must apply to all authorized and legal state sales or grants in accordance with the contractual and compact provisions of Article VIII, Sec. 9, Constitution of Alaska and Sec. 6(i) of the Alaska Statehood Act. In this event, Sec. 38.95.060, Alaska Statutes, providing for the exchange of land with a native corporation would not be in accordance with the public auction and competitive bid requirements set forth in Sec. 38.05.045-120, Alaska Statutes.

VII

If the State is assuming for the purposes of the proposed exchange transaction that Sec. 38.95.060 (exchange provision) is outside the scope of the auction and competitive bidding provisions, and outside the reservation of mineral rights provisions, then Sec. 38.95.060 and Sec. 38.05.125 are in violation of Article VIII, Sec. 9 of the Alaska Constitution and the compact provisions between the Constitution and the Alaska Statehood Act. The proposed exchange is, therefore, illegal.

COUNT THREE

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.

II

Article VIII, Sec. 10 of the Constitution of the State of Alaska states as follows:

> No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

RAYMOND A. ... ISETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-3479

Although the State has conducted numerous hearings on the proposed land trade, the actual lands to be made the subject of the trade with the native corporation have not yet been determined. In accordance with Sec. 12(b) of the Amendments of ANCSA, and the "Terms and Conditions," the Cook Inlet region is allowed to select lands from various "pools." How much of the Beluga coal land and other lands now belonging and patented to the State will be selected from these "pools", and the exact location and value of such lands, still has yet to be determined and probably will not be determined until long after the Governor gives his consent.

III

The public notice requirements of Article VIII, Sec. 10 of the Alaska Constitution have not been complied with insofar as said provisions must require that notice not only be given of the exchange, but of the value and appraisals of the resources and surface rights contained therein, and the exact nature of the trade so as to give the public real notice of what is contemplated in terms of economic impact to the State Treasury now and in the future. Without these additional facts, notice is meaningless and ineffective.

IV

Article VIII, Section 10 also requires "other safeguards of the public interest as may be prescribed by law" as a part of a notice requirement prior to disposal of state lands. Plaintiffs allege that the terms of the proposed sale to this date remain indeterminate, indefinite, and of such an ambigoous nature that the public has received inadequate notice of the economic consequences of the proposed exchange. Even the legislature is unable to prescribe safeguards because it, like the plain-

RAYMOND A. NESBETT
ATTORNEY AT LAW
657 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-4477

tiffs, has no exact knowledge of specific lands and resources involved. The proposed exchange, therefore, violates Article VIII, Section 10, Constitution of the State of Alaska.

COUNT FOUR

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.

II

Article VIII, Section 17, Constitution of the State of Alaska, provides as follows:

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

III

Plaintiffs allege that the proposed land trade involving the Cook Inlet region violates Article VIII, Section 17 of the Alaska Constitution in that the trade or exchange will result in valuable state resources being conveyed to a private corporation for less than fair value and for the use and benefit of less than all citizens of the State of Alaska.

IV

The purported and invalid attempt on the part of Congress to waive provisions of the Alaska Statehood Act, requiring reservations of all minerals for the benefit of all citize of the State, and the purported and invalid attempt of the State to convey the mineral rights underlying state lands in violation of the State Constitution, results in the application of federal and state law which is not uniform and which does not apply to all citizens of the State equally. The State through the proposed exchange is violating the intent and purpose of Article VIII, Section 17, Constitution of the State of Alaska.

RAYMOND A. NESBETT
ATTORNEY AT LAW
[illegible] WEST 5TH AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE [illegible]

COUNT FIVE

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.

II

Sec. 38.95.060, Alaska Statutes, providing for the exchange of state lands with lands owned by the regional corporation, cannot and does not purport to amend, change or waive the provisions of Article VIII, Sec. 9 of the Alaska Constitution and Sec. 6(i) of the Alaska Statehood Act, both of which require that all deeds or grants of state lands reserve to the State all mineral rights contained therein.

III

The purported land exchange between the State and the Cook Inlet Region, in addition to conveying subsurface mineral rights in violation of Article VIII, Sec. 9 of the Alaska Constitution and Sec. 6(i) of the Statehood Act, is also in excess of the authority set forth in Sec. 38.95.060, Alaska Statutes, which does not in any manner refer to subsurface mineral rights as a part of the exchange.

COUNT SIX

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 6(i) of the Alaska Statehood Act in conjunction with Article VIII, Section 9 of the Alaska Constitution created a compact which thereafter and until amended according to law, guaranteed to all the people of the State of Alaska that the mineral resources of the State would be retained by the State and its citizens. The grant of lands from the federal government

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0477

to the State was expressly conditioned upon the State preserving the mineral rights for all its citizens, and the State cannot now legally, without a proper vote of the people as required to amend the Alaska Constitution, convey said mineral rights and thereby bestow a special benefit on any person or corporation, public or private, at the expense of the citizens of Alaska.

III

The Alaska Statehood Act and the Alaska Constitution place the State in the position of trustee over the mineral resources of the citizens of the State, and the State cannot now legally abdicate its duty as trustee without the consent of its citizens any more than it could abdicate its police powers and duty to protect persons and their property.

COUNT ~~SIX~~ SEVEN

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 38.95.060, Alaska Statutes, providing for the exchange of land, states that a corporation organized under Alaska law pursuant to the federal Alaska Native Claims Settlement Act may obtain "up to 23,040 acres of state land."

III

The purported land exchange between the State and the Cook Inlet Region purports to grant far in excess of 23,040 acres of state land; to the contrary, the proposed exchange would involve over 400,000 acres. Therefore, even if Sec. 38.95.060, Alaska Statutes, is a valid delegation of legislative authority to the Governor, the proposed exchange is not within the limitations imposed by this section.

RAYMOND A. NESBETT
ATTORNEY AT LAW
617 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 276-5477

Actually 495,360 acres of state patented land

COUNT ~~SEVEN~~ EIGHT

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 38.95.060, Alaska Statutes, states as follows:

> (c) Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.

III

The proposed exchange of lands between the State and Cook Inlet region are not based upon equal value. The State has not conducted adequate appraisals of the coal and other natural resources underlying the lands attempted to be exchanged in this transaction, and the State is proposing to give away coal resources which ultimately may be of more value and benefit to the State of Alaska than the resources underlying the Prudhoe Bay oil fields.

IV

The State is attempting to exchange state lands involving enormous coal resources in exchange for lands which, although useful for park and recreational purposes, contain little inherent value. Sec. 38.95.060(c) incorporates the concept of "cash" in equalizing values, and the actual monetary benefits and disadvantages should be the primary factor in determining equality in this proposed exchange. Although park and recreational lands do have value to the State, the enormity and magnitude of the economic value and benefit to the State of its mineral rights far outweigh any assertion on the part of the State that the proposed exchange is on the basis of equal value.

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3rd AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-3477

COUNT ~~EIGHT~~ NINE

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 17 of the Amendments to the Alaska Native Claims Settlement Act, which purports to allow the State to convey its lands in conjunction with the Cook Inlet Region settlement free of the restrictions of Sec. 6(i) of the Alaska Statehood Act, is a unilateral attempt on the part of the Congress to waive and amend the compact provisions of the Statehood Act in order to obtain state lands and their underlying mineral rights for the sole purpose of effecting a federal settlement with the natives of Alaska.

III

The purported attempt of Congress in Sec. 17, to authorize the disposal of state lands contrary to the Alaska Statehood Act and the Alaska Constitution, is in violation of the Supremacy Clause of the Constitution of the United States. This clause declares that the laws of the United States shall be the supreme law of the land, but also directly limits the supremacy to that area solely within the sphere of lawful federal power and that area not reserved to the states by the Tenth Amendment.

IV

Amendment X of the Constitution of the United States specifically states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." The federal government, through its Congress, does not possess the constitutional authority to enact Sec. 17 of the Amendments,

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-8477

which is nothing more than an attempt to control the power or authority of the State of Alaska concerning the dispositions of its own lands. Congress determined in the Statehood Act the circumstances under which the State of Alaska would be admitted into the Union, but this did not and does not give Congress any power to change or modify, either directly or indirectly, the provisions of the Constitution of the State of Alaska.

VI

By the enactment of Sec. 17 of the Amendments, the Congress of the United States is violating the compact provisions of the Statehood Act which provide that upon the issuance of the proclamation of the President, the State of Alaska "is hereby declared to be a State of the United States of America, is declared admitted into the Union on an equal footing with the other states in all respects whatever, ..."

VII

Should the attempt of Congress pursuant to Sec. 17 of the Amendments be construed to be a valid exercise of federal authority concerning state lands, the State of Alaska would, in effect, be denied admission into the Union on equal footing. Any such attempt is, therefore, in violation of federal law.

COUNT ~~NINE~~ TEN

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.

II

Sec. 38.95.060 providing for the exchange of land with a native corporation, states that "with the consent of the governor, a corporation . . . may obtain up to 23,040 acres

RAYMOND A. NESBETT
ATTORNEY AT LAW
[illegible]
ANCHORAGE, ALASKA [illegible]
TELEPHONE [illegible]

of this land, if it has not been disposed of or developed, by exchanging land or interest in land with the State." This section further states that exchanges shall be on a basis of equal value.

III

The legislative delegation of authority to approve of exchanges of land granted to the governor pursuant to the above-cited statute is an unconstitutional and invalid delegation of legislative authority by virtue of insufficient standards, rules and regulations to govern the sale and exchange transaction contemplated therein.

IV

Sec. 38.05.035, Alaska Statutes, states that the Director of the Division of Lands shall " . . . (2) manage, inspect and control state lands and improvements on them belonging to the State and under the jurisdiction of the division;" . . . . The same section states that the Director shall" . . . (7) have jurisdiction over state lands . . . and shall perform the duties necessary to protect the state's rights and interest in state lands, including the taking of all necessary action to protect and enforce the state's contractual or other property rights; . . . . "

V

Sec. 38.05.035, Alaska Statutes, further states that the power of the Director of the Division of Lands authorizes him . . . "(14) when he finds that the interest of the state will be best served, he may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available lands, resources, property or interest in them, . . . and no contract for the sale, lease, or other disposal of available lands or interest in them, is legally binding on the

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501

State until the commissioner formally records his consent to the contract; . . . . "

VI

Article VIII, Section 9, Constitution of the State of Alaska, authorizes the legislature to provide for the sale or grant of state lands, and establish sales procedures. Pursuant thereto the Alaska legislature delegated to the Department of Natural Resources, its Commissioner, and the Director of the Division of Lands the duty of making findings and determinations relating to the best interests and welfare of the State of Alaska. The legislature established sale procedures for the sale of state lands in Section 38.05.045 et seq.

VII

By virtue of Section 38.95.060, Alaska Statutes, the legislature is attempting to delegate the decision of making a land exchange concerning valuable state resources not to an administrative agency, but to the Governor, a single employee of the executive branch, contrary to the established sale procedures, regulations and statutes which give exclusive jurisdiction over the sale and disposal of state lands to the Director of the Division of Lands and the Commissioner of Natural Resources. There are no standards set forth in the exchange provisions governing the appraisal and determination of equal values, and there is not even a requirement that the consent of the governor be withheld until the exact lands involved have been identified and the exact appraisal and valuation of the exchange is made definite.

VIII

The legislature in Section 38.95.060, Alaska Statutes, is, pursuant to invalid federal legislation, attempting illegally

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0699

to give away irreplaceable natural resources at the sole discretion of the Governor, thereby divesting the Division of Lands and its Director of its constitutional and statutory power to control and manage state lands through established procedures.

COUNT ~~TEN~~ ELEVEN

I

Plaintiffs reallege Paragraphs 1 through XIX of their First Count herein.

II

The proposed exchange attempts, through federal legislation to unilaterally waive or amend the Alaska Statehood Act; subverts the jurisdiction of the Division of Lands; disposes of lands without established and appropriate sale procedures; and denies the citizens of the State of Alaska the protection of Article VIII, Section 9 of their Constitution and its compact with the federal government pursuant to Section 6(i) of the Statehood Act. For these reasons the proposed exchange and its implementing legislation deprive plaintiffs and the citizens of the State of Alaska of their property and resources without due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and Article I, Section 7 of the Constitution of the State of Alaska. Further, the proposed exchange denies the citizens of Alaska of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 1, Alaska Constitution.

WHEREFORE, plaintiffs on their own behalf and on behalf of all of the citizens of the State of Alaska, pray for an order of this court granting them judgment declaring that the

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0477

proposed exchange of land between the State of Alaska and the Cook Inlet Region, Inc. be declared illegal as in contravention and in violation of the Federal and State Constitutions, and the applicable Alaska Statutes; further,

Plaintiffs pray for judgment permanently enjoining defendants, their agents and employees, from consenting to, implementing, negotiating, or in any manner conveying or attempting to convey any of the lands and mineral rights as contemplated in Section 12 of the Amendments to the Alaska Native Claims Settlement Act; and further,

For judgment awarding plaintiffs their costs and attorney fees for protecting their interests and the interests of all citizens of the State of Alaska.

DATED at Anchorage, Alaska this 31st day of March, 1976.

Raymond A. Nesbett
RAYMOND A. NESBETT
Attorney for Plaintiffs

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

J. R. LEWIS and HAROLD H. GALLIETT, JR., being first duly sworn on oath, depose and say:

That they are the plaintiffs in the above-entitled action; that they have read the foregoing Complaint, know the contents thereof and believe the same to be true.

J. R. Lewis
J. R. LEWIS

Harold H. Galliett, Jr.
HAROLD H. GALLIETT, JR.

SUBSCRIBED AND SWORN to before me this 1st day of March, 1976.

Raymond A. Nesbett
Notary Public in and for Alaska
My Commission Expires: 9-16-77

RAYMOND A. NESBETT
ATTORNEY AT LAW
837 WEST 5th AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-8477

(e) The extremely valuable patented state lands which these top officials are attempting to exchange for unconscionably less valuable lands, are as follows:

(1) POINT MACKENZIE POOL - An unspecified 3,200 acres of land, together with mineral estate. This land could include uniquely-valuable, Point Mackenzie port lands or enormously-valuable lands containing an estimated 550 million tons of coal between the surface and a depth of 2,000 feet, as estimated from oil well logs.

(2) KNIK-WILLOW POOL - An unspecified 4,480 acres of land, including mineral estate. This land could include enormously-valuable coal lands containing an estimated 770 million tons of coal between the surface and a depth of 2,000 feet, as estimated from oil well logs.

(3) KASHWITNA POOL - An unspecified 38,400 acres of land, together with mineral estate. This land could include valuable home and agricultural land, for which Alaskans and outside speculators alike have competed to purchase at rapidly escalating prices.

(4) CHICKALOON POOL - An unspecified 4,800 acres of land, including mineral estate. This land could include extremely-valuable coal lands containing large reserves of bituminous coal. Some of this coal is of high-priced, coking-quality, as determined from U. S. Geological Survey and U. S.

Bureau of Mines investigations.

(5) KENAI POOL - An unspecified area of at least 115,200 acres - and possibly much more acreage, depending on as yet uncertain Native village corporation entitlement - together with mineral estate. This land could include enormously-valuable coal lands containing about 20 billion tons of coal between the surface and a depth of 2,000 feet, as estimated from oil well logs and surface outcrop data.

(6) BELUGA POOL - An unspecified area of 13½ townships (311,040 acres), including mineral estate. This land is to be selected by the Cook Inlet Region, Inc., from a larger area consisting of 16 townships (368,640 acres), after possible selection of one township of surface estate by the Tyonek village corporation. The attempted land exchange permits the Cook Inlet Region, Inc., to select the most valuable lands in the pool. Under the terms of the attempted exchange, enormously-valuable patented state coal lands will be granted by the state. The most valuable coal lands in this pool contain about 26 billion tons of coal between the surface and a depth of 2,000 feet, as estimated from nearby oil well logs, surface outcrop data and geophysical surveys.

3. VALUE OF COAL WHICH MAY BE LOST TO THE STATE

(a) I estimate eventual recovery of 50 percent of the coal estimated above.

(b) I estimate the present mean effective state coal royalty in said pools to be 20 cents per ton.

(c) In making my estimate of future state coal royalty income from lands which may be lost, I first estimate that no significant reduction of the estimated resource will occur in the next 20 years as a result of mining. Second, I estimate inflation henceforth at 6 percent per annum, compounded annually. Third, I estimate a real increase in the value of coal due to improvements in technology and increased demand, at 3 percent per annum, compounded annually. Fourth, I estimate that the royalty paid to the state for coal will be changed by law to a percentage of pit head price, and that this percentage of pit head price will become fully effective within 20 years from the date hereof. Fifth, I estimate that the overall escalation factor to be applied to state coal royalties will be 9 percent per annum, compounded annually.

(d) In making my estimate of the present value of future state coal royalty income from lands which may be lost, I first estimate that interest charged the state for bond funds will be 6 percent per annum. Second, I estimate that the required marginal utility of state bond funds above interest cost, will be 50 percent of interest cost. Therefore, I estimate that the overall discount factor to be applied to determine the discounted present value of future state coal royalty income from lands which may be lost, will be 9 percent per annum.

(e) Therefore, I calculate that the escalation factor offsets the discount factor, and that my estimate of the present mean effective state coal royalty may be applied to recoverable coal to compute the present value of future state coal royalty income from lands which may be lost.

(f) Thus, the estimated present value of only a part of the coal which may be lost by the state in this attempted land exchange, is as follows:

(1) POINT MACKENZIE POOL

550,000,000 Tons		
X 50% Recovery		
X 20¢/Ton Royalty	=	$55,000,000

(2) KNIK-WILLOW POOL

770,000,000 Tons		
X 50% Recovery		
X 20¢/Ton	=	77,000,000

(3) KENAI POOL

20,000,000,000 Tons		
X 50% Recovery		
X 20¢/Ton	=	2,000,000,000

(4) BELUGA POOL

26,000,000,000 Tons		
X 50% Recovery		
X 20¢/Ton	=	2,600,000,000

(5) PRESENT VALUE OF COAL WHICH MAY BE LOST BY THE STATE $4,732,000,000

(g) The complex Chickaloon coalfields contain large resources of bituminous coal which could be estimated, if need be.

(h) The quantities of coal in the attempted exchange lands below a depth of 2,000 feet are larger than the quantities of coal above a depth of 2,000 feet. These resources could be estimated, if need be, and many mines could be cited which recovered coal as early as 1910 from depths greater than 2,000 feet.

(i) The estimated quantities of coal in the lands to be lost by the state from the Beluga Pool are conservative. These estimated quantities amount to about 2.5 percent of the volume of tertiary sedimentary rocks to a depth of 2,000 feet in the possible Beluga Pool exchange area. The average percentage of coal in nearby tertiary sedimentary rocks, as determined by interpretation of suites of oil well logs, is about 7.8 percent.

4. VALUE OF OIL AND GAS WHICH MAY BE LOST TO THE STATE

(a) The Beluga tertiary basin, much of which is in the attempted exchange lands, has recently, as a result of gravity geophysical work, been recognized as having sufficient depth of sedimentary rocks to offer good possibilities for oil and gas discoveries.

(b) At the Beluga River gas field, drilling by Standard Oil Company of California of three stepout wells has resulted in increasing the probable reserves of this field from 500 billion cubic feet to one trillion cubic feet. Parts of the

Beluga River gas field are excluded from the attempted land exchange. But, continuation of planned stepout drilling is likely to extend this gas field out into the lands attempted to be exchanged.

(c) Ten miles northeast of the Beluga gas field, Cities Service Oil Company and Pacific Lighting Corporation have very recently discovered a gas field estimated to hold one trillion cubic feet of gas. Similar discoveries are likely in the attempted exchange lands

(d) Gas discoveries in the amount of one trillion cubic feet in the attempted exchange lands would yield about 125,000,000 MCF of in-kind royalty gas to the State of Alaska. I follow the same rationale for estimating present value of future gas income as has been given above for coal royalties. Using a present gas sale price of 50 cents per MCF, gas discoveries in the amount of one trillion cubic feet in the attempted exchange lands would have a present value to the state of $62,500,000.

(e) Yet, the state has thus far assigned no value to the great oil and gas potential in the attempted exchange lands.

5. VALUE OF SURFACE ESTATE WHICH MAY BE LOST BY THE STATE

(a) The present value of surface estate which may be lost by the state in the attempted land exchange is estimated as follows, using the same present value rationale as for coal:

(1) POINT MACKENZIE POOL

3,200 Acres
X $10,000
Per Acre = $32,000,000

(2) KNIK-WILLOW POOL

8,320 Acres
X $2,000
Per Acre = 16,640,000

(3) KASHWITHA POOL

38,400 Acres
X $1,000
Per Acre = 38,400,000

(4) CHICKALOON POOL

5,730 Acres
X $500
Per Acre = 2,865,000

(5) ALEXANDER CREEK

4,560 Acres
X $500
Per Acre = 2,280,000

(6) SALAMATOF

5,945 Acres
X $1,000
Per Acre = 5,945,000

(7) KENAI PENINSULA

117,315 Acres
X $1,000
Per Acre = 117,315,000

(8) BELUGA POOL

11,520 Acres
Port &
Industrial
Site X
$10,000
Per Acre = 115,200,000

5,760 Acres
Townsite
X $10,000
Per Acre = 57,600,000

316,800 Acres
Coal Surface
X $200 Per
Acre = 63,360,000

(9) PRESENT VALUE OF SURFACE ESTATE WHICH MAY BE LOST BY THE STATE $451,605,000

(b) The theory used by state officials in valuation of surface estate has been that all surface estate must be valued as though put on the market at once. Such a one-time sale would yield prices much less than would be realized by spreading sales over a period of years.

(c) My estimates above are based on sales at continuously escalating land prices, over a long period of years. I estimate that the escalation factor for land prices offsets the discount factor derived from the interest cost and required marginal utility of state bond funds.

6. VALUE OF SURFACE ESTATE WHICH MAY BE RECEIVED BY THE STATE

(a) The present value of surface estate which may be received by the state in the attempted land exchange is estimated as follows:

(1) NUSHAGAK, KULCHATNA & KOKSETNA DRAINAGES

587,520 Acres
X $40 Per
Acre = $23,500,800

(2) TALKEETNA MOUNTAINS, KAMISHAK BAY & TUTNA LAKE AREAS

596,480 Acres
X $60 Per
Acre = 35,788,800

2,560 Acres,
Chenik Port
Site, X
$5,000
Per Acre = 12,800,000

(3) CAMPBELL AIRSTRIP TRACT

4,120 Acres
X $20,000
Per Acre = 82,400,000

(4) TALKEETNA MOUNTAINS & KOKSETNA DRAINAGE

285,696 Acres
Selection Rights
Only,
Discretionary
With Secretary
of the Interior,
X $40 Per Acre = 11,427,840

(5) PRESENT VALUE OF SURFACE ESTATE WHICH MAY BE RECEIVED BY STATE $165,917,440

7. SUMMARY OF ATTEMPTED EXCHANGE VALUES

(a) The following is my summary of estimated values which the state may lose in the attempted land exchange:

(1)	PRESENT VALUE OF COAL	$4,732,000,000
(2)	MINIMUM PROBABLE PRESENT VALUE OF OIL & GAS	62,500,000
(3)	PRESENT VALUE OF SURFACE ESTATE	451,605,000
		$5,246,105,000

(b) The following is my summary of estimated value which the state may receive in the attempted land exchange:

(1)	PRESENT VALUE OF SURFACE ESTATE	$165,917,440

(c) From this summary, the net loss to Alaska citizens is as follows:

$5,080,187,560

8. LAND CONSOLIDATION AND FACILITATION OF MANAGEMENT OR DEVELOPMENT OF THE LAND

(a) The attempted land exchange will destroy the compact integrity of patented state lands in the heartland of our state. State lands will be broken up, not consolidated.

(b) The attempted land exchange will create conflict of land management where none existed or could exist before.

(c) The attempted land exchange discourages settlement on the land by all citizens equally, except as leasehold tenants on terms dictated by Native corporations.

(d) The attempted land exchange denies Alaska citizens responsible state environmental and economic control in the public interest of an empire of coal on the threshold of development.

(e) The attempted land exchange makes inadequate provision for rights-of-way to and from state lands, across lands which may be lost by the state.

(f) The attempted land exchange could result in the loss to the state of the critical deep-water port and industrial site at Beluga. This site is essential to the future processing and shipment of not only Beluga coal, but also Susitna coal, Matanuska coal, Nenana coal, and other future exports from the Interior and North Slope. The hinterland of this port will be as large as Texas. The result of selection of the Beluga surface estate by the Tyonek village corporation, as provided for in the attempted land exchange, will be to create a virtual monopoly of natural resources port sites on the northwest shore of Cook Inlet in this one, narrowly-based, profit-making corporation.

9. EQUAL VALUE

(a) There is no way to assure equal value in the attempted land exchange. No cash payment to equalize values attempted to be exchanged is authorized under the pertinent federal act. The major values are mineral values. Not enough testing with the drill has been done, and there is not enough time to drill and report and evaluate under the fixed terms and conditions of the importunate federal act.

(b) It is impossible to determine most of the values which will be exchanged in the short time which has been allowed by the federal act. Alaska citizens are denied a map showing the exact patented state lands which will be lost. Alaska citizens are denied a legal description of the specific lands

to be conveyed away. Alaska citizens are denied any development plan for the lands to be given up, with which to properly assess values.

(c) It is impossible to obtain a complete and unbiased geological report by state geologists. This results not only from inadequate time, but also from intimidation of professional staff by gubernatorial firing of a chief advisor for giving testimony before the Alaska legislature against the attempted land exchange. Present reports from the Alaska Division of Geological and Geophysical Survey are so incomplete as to be false. These present reports show evidence of having been instigated and hastily-prepared to support a predetermined conclusion by officials named earlier in this affidavit.

(d) Advice from the Joint Federal-State Land Use Planning Commission has been compromised by the firing of the state co-chairman, David Jackman, as noted above. The pressure on other state-appointed members of the Commission tends to bias, not rational consideration and impartial advice. A new appointee, mindful of the fate of his predecessor, may vote accordingly.

(e) Increase in the value of Governor and Master Guide Jay S. Hammond's Lake Clark lodge, resulting from creation of nearby federal and state hunting lands protected from Native hunting restrictions, creates another conflict of interest which further taints any determination of equal value by the present administration.

Alaska State Legislature

30 APRIL 76

JUNEAU ALASKA

M E M O R A N D U M

TO: ALL SENATORS

FROM: SENATOR KAY POLAND, CHAIRMAN
RESOURCES COMMITTEE

SUBJECT: ALASKA ROYALTY GAS SALE NO. 76-1 KEP

A packet containing the particulars of the above referenced matter has been placed in every Senator's mail box. The Resources Committee has scheduled a hearing on the concurring measure, SCR 106, or it's House counterpart, on Wednesday, 12 May.

It is expected that the measure will be calendared for floor action almost immediately thereafter, and each member is urgently requested to review the applicable material.

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 30, 1976

The Honorable Chancy Croft
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Transmittal of Proposed
Alaska Royalty Gas Sale No. 76-1

Dear Mr. President:

Attached is Alaska Royalty Gas Sale Contract No. 76-1 providing for a sale of State royalty gas from the North Cook Inlet Gas Field to Alaska Pipeline Company pursuant to AS 38.06 et seq., AS 38.05.182-183, and 11AAC26.005-.900. Also attached are all necessary waivers or consents related to this action and required under the law. The contract and all necessary related actions have been approved by the Alaska Royalty Oil and Gas Development Advisory Board pursuant to the above statutes and regulations. Other information pertinent to the proposed sale is also attached, with the intention of supplying you with an adequate record on this matter.

Alaska Pipeline Company, and its subsidiary Alaska Gas and Service Company, supply natural gas to the Anchorage area and a portion of the North Kenai peninsula known as the North Kenai road area. Increased use of natural gas due to growth in both areas is diminishing the gas reserves dedicated to Alaska Pipeline Company faster than anticipated. The company estimates that the contract amount for the North Kenai road area will be exhausted by May of this year and has executed a one year contract with their present supplier to extend their service.

Natural gas from the North Cook Inlet Gas Field, operated by Phillips Petroleum Company, is transported from the offshore platform to the LNG plant in the Nikiski area served by the North Kenai road and liquified for export to Japan.

The proposed contract provides that the State of Alaska will take its royalty share of the North Cook Inlet Gas Field production in kind rather than in value, and sell this gas to Alaska Pipeline Company at the same price that the State would otherwise receive from Phillips Petroleum Company. The amount of gas sold would average 15 to 16 million cubic feet per day and total about 41 billion cubic feet over the term of the royalty sales contract, which would expire June 1, 1984, coincidentally with the expiration of the present Phillips contract for export to Japan. Transportation or exchange provisions will be arranged by Alaska Pipeline Company, as will all necessary regulatory clearances.

The present peak gas demands along the North Kenai road can be as high as 10 million cubic feet per day. Gas excess to these needs can be used to augment the gas supply to Anchorage and extend the life of those reserves.

The total contract amount represents about one and one-half year's supply of gas at Anchorage's present rate of use, and about one year's production of the North Cook Inlet Gas Field.

The Commissioner of Natural Resources and the Alaska Royalty Oil and Gas Development Advisory Board recognize that the proposed sale of royalty gas will somewhat shorten the productive life of the North Cook Inlet Gas Field by approximately one year. Since the LNG contract requires delivery of a specified amount each year it will be necessary to increase the daily production of the field by the amount of the royalty gas withdrawn from the LNG plant. On balance, nowever, the sale of this royalty gas to supply the North Kenai road area and Anchorage is deemed to be in the best interest of the State, as it returns State royalty gas from foreign export to Alaska consumers at a price which assures all Alaskans a fair return for their resources.

I have, at various times, expressed the belief that section 55 of the Royalty Board Statute (which requires legislative approval by concurrent resolution of any sale of surplus royalty gas) is unconstitutional. The Administration believes that this requirement raises a substantial constitutional question and has concluded that in the future appropriate action will be necessary either by the Legislature to amend the Royalty Board Statute or by the courts to decide the constitutionality of

section 55. Notwithstanding such doubts concerning the constitutionality of this provision, the contract is being submitted to the Legislature for approval. Two reasons support this submission First, arly in this session, the Commissioner of Natural Resources advised the Legislature of his intent as a policy matter to carry out all the requirements of the Royalty Board Statute. I believe it would be less than forthright to pursue any other course for a sale during the closing days of the legislative session. Second, although this sale involves a relatively small quantity of gas, I am anxious to see it consummated at the earliest possible time as it will directly and immediately benefit gas consumers in the Anchorage and North Kenai areas. For that reason, it is undesirable that this contract become entangled in litigation which might extend over a lengthy period of time.

To avoid the choice of either appearing to acquiesce in the requirement of legislative approval or undertaking a perhaps unnecessary confrontation, a term has been included within the contract which provides that the contract will not become effective until approved by concurrent resolution passed by a majority of each house of the Legislature. The Administration always has the right to seek the advice and counsel of the Legislature and I have in this contract sought to make legislative approval a condition precedent to the contract becoming effective. I am submitting this contract to you for your approval pursuant to that term. However, in doing so, I wish to make clear beyond preadventure that my action should not be construed as either approval of or acquiescence in section 55 of the Royalty Board Statute and that I do not feel personally or legally obligated to submit future contracts for the sale of royalty oil or gas to the Legislature for approval by concurrent resolution.

You are aware that this is the first royalty sale contract prepared under the existing Statute, and of the first of its kind in the Nation. The Commissioner of Natural Resources, who is the official responsible for the agreement, is prepared to supply all necessary additional information to assist you in your consideration of this sale contract. Thank you for your consideration.

Sincerely,

Jay S. Hammond
Governor

Attachment

Gas Purchase Contract No. 76-1

This Contract, made and entered into this_____day of_____1976, by and between the Alaska Pipeline Company ("APC") herein referred to as "Buyer" and the State of Alaska, hereinafter referred to as "Seller" :

WITNESSED

WHEREAS, Buyer owns and operates a natural gas pipeline system in areas of Alaska for the delivery of natural gas for ultimate consumption within the State of Alaska, and

WHEREAS, Seller has the right under each of the leases identified at Exhibit "A" attached hereto to be paid by the lessee thereunder a royalty of twelve and one-half percent in kind or in value of the natural gas produced and saved and used off of the lands covered by each such lease, and

WHEREAS, Seller is authorized by AS 38.05.183 to sell royalty gas; and

WHEREAS, Buyer represents to Seller that all gas purchased under this contract will be used to meet the requirements of its customers within the State of Alaska;

NOW, THEREFORE, in consideration of the representations, covenants, and conditions herein contained, Buyer and Seller hereby agree as follows:

ARTICLE 1

Seller's Royalty Gas

1.1 Seller hereby agrees that within 30 days after the execution and approval of this agreement as required by the laws of the State of Alaska, Seller shall notify the lesse under the leases set forth at Exhibit "A" of this agreement of Seller's election to take its royalty gas in kind. Said notice will provide that the lessee shall commence the delivery of said royalty gas to Seller (or to Seller's designee) upon a receipt of notice from Seller that all facilities necessary to enable Buyer to receive and market said gas are ready; provided, however, in no event shall lessee be required to commence the delivery of royalty gas to Seller (or its designee) prior to six (6) months following lessee's receipt of notice of Seller's election to take its royalty gas in kind.

1.2 In order that Seller can give its lessee as much advance notice as possible of the date it will start receiving its royalty gas in kind, Buyer shall notify Seller, and Seller shall notify its lessee, at least 60 days prior to the date Buyer will receive gas from Seller pursuant to this contract.

ARTICLE II

Quantity

2.1 It is understood and agreed by the parties that the volume of gas available to Seller from the leases covered by this contract depends upon the production from the leases over which Seller has no control. Buyer hereby agrees to purchase on each day commencing with the date of first delivery

hereunder and continuing during the term of this contract all of Seller's royalty gas available at the point of delivery described in Article III hereof.

ARTICLE III

Delivery Point and Delivery Pressure

3.1 The point of delivery of all gas delivered hereunder shall be at the same point of delivery that Seller receives delivery of its royalty gas from its lessee in the North Cook Inlet Field.

3.2 Buyer, at its own expense, shall arrange to accept Seller's gas at the point of delivery.

3.3 Seller will deliver gas received by Seller from lessee at the pressure at which the gas is received by Seller from its lessee.

ARTICLE IV

Quality

4.1 The gas to be delivered by Seller to Buyer at the delivery point shall be gas of the same quality as is delivered to Seller by the lessee at the point of delivery.

ARTICLE V

Price and Billing

5.1 The price to be paid by Buyer to Seller for gas delivered shall be as follows:

a. Commencing on the date of first deliveries hereunder, assuming that this date occurs prior to July 1, 1977 and continuing until the first day of July 1977, the price shall be 55.5 cents per MCF.

b. Commencing on the first day of July 1977 and continuing until the first day of July 1978 the price shall be the higher of (i) 60.36 cents per MCF, (ii) the price Seller would have received from Phillips Petroleum Company had it not elected to receive its royalty gas in kind, (iii) the highest price paid by any purchaser in the upper Cook Inlet area for gas of similar quality and similar conditions of delivery; with due regard to appropriate factors including, but not limited to, difference of BTU content, delivery pressure, term of the contract and connection charges.

c. For each succeeding 12 month period commencing July 1, 1978 the price shall be increased to the higher of (i) the previous year's price plus 2 cents per MCF, (ii) the price Seller would have received had it not elected to take its

royalty in kind, (iii) the highest price paid by any purchaser in the upper Cook Inlet area for gas of similar quality and conditions of delivery; with due regard to appropriate factors including, but not limited to, difference of BTU content, delivery pressure, term of the contract and connection charges.

5.2 Thirty days prior to the date of each annual price change, Seller, at its option, may determine the price which it would have received from its lessee had it not elected to take its royalty gas in kind and the highest price being paid for gas of similar quality and similar conditions of delivery; with due regard to appropriate factors including, but not limited to, difference of BTU content, delivery pressure, term of the contract and connection charges in the upper Cook Inlet area and submit the same to Buyer along with suitable supporting evidence as to such prices. Buyer shall have the right to submit other evidence within the 30 day period.

5.3 After the delivery of gas has commenced Buyer shall, on or before the 20th day following the end of each month, render to Seller a statement showing the quantity of gas delivered during that month and shall therewith pay Seller the amount due for all such gas.

5.4 Each party hereto shall have, at its expense, the right to examine the books and records of the other party to the extent necessary to verify the accuracy of any statement, charge, computation, or demand made under or pursuant to this

contract. Any statement shall be final as to both parties unless questioned in writing within two (2) years after payment thereof has been made.

5.5 The terms "upper Cook Inlet area" as used here in shall mean the area encompassed in a radius of 100 kilometers from the Phillips Petroleum North Cook Inlet platform.

ARTICLE VI

Term

6.1 This contract shall become effective upon the execution hereof and the approval of the Alaska Royalty Oil and Gas Development Advisory Board and the State Legislature and shall continue and remain in effect until July 1, 1984, unless terminated prior to such date by mutual agreement of the parties, or pursuant to Article VII.

ARTICLE VII

Conditions Precedent

7.1 Buyer shall have the right to terminate this contract upon 30 days written notice to Seller if Buyer is unable to make satisfactory arrangements to take delivery of the gas. Buyer shall exercise this right to terminate on or before January 31, 1978, thereafter Buyer may not exercise this right to terminate.

ARTICLE VIII

Notices

8.1 Notices required to be given under this contract shall be deemed sufficiently given and served when and if

deposited in the United States mail postage prepaid and certified or registered addressed to Seller at:

Commissioner

Department of Natural Resources

Pouch M, Juneau, Alaska 99811

or to Buyer at:

Alaska Pipeline Company

P. O. Box 6288

Anchorage, Alaska 99502

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in four (4) original counterparts on this day and year first above written.

"BUYER"

_____

ATTEST:

_____

STATE OF ALASKA

_____

ATTEST:

_____

Approval to Reject Bids

The Alaska Royalty Oil and Gas Development Advisory Board approves rejections of all bids or applications for the royalty gas from the North Cook Inlet gas field except that of Alaska Pipeline Company as provided for in AS.38.06.050(b)

Date April 26, 1976

Approved	Disapprove

Approval to Waive Competitive Bidding

The Alaska Royalty Oil and Gas Development Advisory Board approves the waiver of competitive bidding by the Commissioner of Natural Resources in the sale of North Cook Inlet royalty gas to Alaska Pipeline as provided for in AS.38.05.183(a) and AS.38.06.050(c).

Date April 26, 1976

Approved

Disapproved

Approval of North Cook Inlet Field Royalty Gas Purchase and Sale Agreement

The Alaska Royalty Oil and Gas Development Advisory Board approves the Gas Purchase and Sale Agreement for the sale of North Cook Inlet Field royalty gas to the Alaska Pipeline Company as provided for in AS 38.05.183 and AS 38.06.050.

Date April 26, 1976

APPROVED	Disapproved

Findings and Conclusions for Non-Competitive Sale

Pursuant to AS.38.05.183 and AS.38.06 the findings and conclusions which form the basis for the decision that the sale of North Cook Inlet Gas Field royalty gas to Alaska Pipeline Company should be non-competitive sale are summarized.

1. Alaska Pipeline Company formerly Anchorage Natural Gas Company, is in need of additional natural gas supply. The present contract of 10 billion cubic feet to supply the North Kenai road area will be exhausted during the first half of 1976. Alaska Pipeline has executed an agreement recently with their supplier which enables them to use gas from the Anchorage contract reserves to supply the North Kenai area for one additional year. Projections of the present growth rate of Anchorage and use of natural gas indicate that the Anchorage contract dedicated gas supply could be exhausted several years before the contract termination at the end of 1992.

2. The proposed sale amount of royalty gas is sufficient to meet the needs of the North Kenai area for the term of the agreement. Present use of the North Kenai area is 10 million cubic feet per day. About 90% of this gas is used by the Bernice Lake electric generating plant of Chugach Electric Association. The difference between winter and summer loads is small. The North Cook Inlet Gas Field royalty gas share averages 15 to 16 million cubic feet per day. Gas in excess to the North Kenai area demand can be used to augment the Anchorage contract gas supply. The total volume of gas which would be sold under the proposed agreement is approximately 40 to 41 billion cubic feet.

3. North Cook Inlet Gas Field gas furnishes 70% of the gas supply of the Nikiski LNG plant, the remaining 30% is supplied by Marathon from the Kenai Gas Field. The LNG is shipped to Japan in cryogenic tankers and revaporized for use by Tokyo Gas and Tokyo Electric. At this time, the State is taking its royalty share in value and this gas brings the greatest return to the State of any royalty gas.

4. Proposed sale of this royalty gas will not diminish State revenue. Alaska Pipeline has agreed to pay the State the same price that the State otherwise would have received

from Phillips. Price terms in the proposed agreement are based on Phillips prices plus an agreement to pay a price equal to the highest price paid in Upper Cook Inlet for gas of similar quality and similar conditions of delivery.

5. The proposed action may reduce the productive life of the field equivalent to one year at the present rate of production. The total amount of gas sold under the agreement will be about 40 to 41 billion cubic feet per year. The present LNG contract dedicated reserves are 647,543 million cubic feet. Estimated original recoverable reserves were 1,500,000 million cubic feet. The estimated remaining gas reserves not committed to contract are about 834 billion cubic feet. The proposed sale involves about 5% of the remaining uncommitted reserves. Because the LNG sale contract requires delivery of 50,750 million cubic feet of gas per year to Tokyo, it will be necessary for Phillips to increase the field production by the amount withdrawn for royalty sale. While this increased production will shorten the producing life of the field, the amount of decrease is small and amounts to less than one year's production.

6. During the period of review of Alaska Pipeline Company's application for purchase of royalty gas applications were also made by Homer Electric Association, Pacific Alaska LNG and Phillips Petroleum.

   Homer Electric wished to buy the Bernice Lake generating facility from Chugach Electric and wanted to use the North Cook Inlet Gas Field royalty gas to supply the generator. This would be the same use proposed by Alaska Pipeline. Homer Electric subsequently advised the Alaska Royalty Oil and Gas Development Board that HEA had made satisfactory arrangements with the City of Kenai for a gas supply in the event it would be needed.

   Pacific Alaska LNG made a statement that they would be interested in bidding for the North Cook Inlet royalty gas if it were offered in a competitive bid sale.

   Later, Pacific Alaska advised the Board both by mail and in person that they were not making application for the North Cook Inlet royalty gas but rather a general statement applicable to possible future sales of other royalty gas.

Phillips Petorleum made a firm offer to purchase the royalty gas with an increase in price of five cents per thousand cubic feet (MCF) the first year, a similar increase the second year, and an annual escalation of two cents per MCF thereafter for the life of the present contract.

The withdrawals of Homer Electric and Pacific Alaska LNG left Phillips Petroleum as the only viable alternate to Alaska Pipeline's application.

CONCLUSION:

The decision to hold a negotiated sale rather than a competitive sale was based on several factors: end use, price to consumers, and future gas supply for Alaska.

The export of LNG to Japan has created a substantial market for Alaska's natural gas converting a non-revenue producing resource into a valuable asset with substantial revenues to the State.

The exported LNG produces about 75% of the State revenue from natural gas. While there was a reluctance to alter the use of the royalty gas and possibly necessitate additional costs to the LNG project, the use of the gas by the Kenai and Anchorage consumers was deemed to be a higher and better use.

Alaska Pipeline agreed to pay the State the same price the State otherwise would have received for the gas thereby maintaining the same revenue from the gas. While a competitive sale might have resulted in more revenue for the State it would also result in the gas being exported from the State and not available for Alaskan use. Alternately, if an Alaskan comapny was the successful high bidder it likely would set a new high price to the Alaskan consumer.

The present sale represents a balance of public values regarding this series of issues. The proposed non-competitive sale of North Cook Inlet Gas Field royalty gas appears to be in the best interest of the State as a whole and of the Kenai and Anchorage area gas consumers more directly. There is no loss of revenue to the State; the gas sale will be the gas supply for the North Kenai road area and add to the Anchorage area gas reserves; the slight loss of productive life of the North Cook Inlet Gas Field is offset by the continued service to the Alaskan gas consumers.

Homer Electric Association, Inc.
P. O. BOX 255 • HOMER, ALASKA 99603 • PHONE (907) 235-8551

March 30, 1976

RECEIVED
APR - 2 1976
Department of
Natural Resources

Mr. Guy Martin, Commissioner
Royalty Oil and Gas Development Advisory Board
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Sir:

In our letter to Mr. Fackler dated January 22, 1976, and at a hearing before your Advisory Board, we applied for the State Royalty Gas that you plan to make available from presently producing fields in the North Kenai area.

The purpose of this letter is to inform you that we have been able to obtain commitments to purchase fuel for the proposed new electric generating facility at North Kenai from what we believe to be a reliable source; and, further, Mr. Dale Teel of the Alaska Pipeline Company has agreed to supply our Association with natural gas for fuel for the existing electric generating plants in the North Kenai area if we are successful in acquiring these from Chugach Electric Association.

In view of the foregoing, we feel that it is in the best interest of all concerned that we withdraw our application as outlined in our letter of January 22.

As the Kenai Peninsula continues to attract industry, we do not wish to imply that we will not, at some future time, be interested in dealing with the State for royalty gas that may become available in other, yet to be developed, fields on the Kenai Peninsula area. If, at any time, additional royalty gas does become available we would appreciate it very much if your office would advise us so that we can ascertain whether or not it would be needed in our ever-expanding operation.

We note with interest the development of the Advisory Board's intention to adopt a regulation in Title 11 of the Alaska Administrative Code to interpret and make specific Alaska Statute 38.06, including the determination of surplus.

RECEIVED
APR 05 1975
ALASKA ROYALTY
OIL & GAS BOARD

We sincerely hope that the proposed regulation 11AAC26.900(a) (5) will define the term "industrial use" as referred to in existing regulations, and that the State's royalty gas will be made available first to industrial use and then to all other uses, according to priorities established by your office.

We sincerely appreciate the courtesies extended to our Association by the Advisory Board and your office, and we are looking forward to further negotiations should the need arise.

Sincerely yours,

HOMER ELECTRIC ASSOCIATION, INC.

W. C. Rhodes
General Manager

WCR:em

cc: Rep. Leo Rhode
cc: Mr. Dale Teel

March 17, 1976

Mr. Bill Rhodes, General Manager
Homer Electric Association, Inc.
P. O. Box 255
Homer, Alaska 99603

Dear Bill:

Reference is made to our recent conversation regarding a possible natural gas sales agreement between K.U.S.Co. and H.E.A. The purpose of the agreement would be to provide fuel for power generation at a site approximately 6.5 miles north of Wildwood access road on the Kenai Spur Road.

We are of the present opinion that the feasibility exists to provide fuel gas for your proposed generating facilities at a cost considerably below that of any alternate sources known to us. In general, we propose that such an undertaking could be accomplished as follows:

1. The sale would be made under the rates and conditions outlined in Schedule III of our published Tariff, a current copy of which is enclosed herewith. The volume of 4,000 MCF of gas per day mentioned in our discussion represents a total annual volume of 1,460,000 MCF. Computed on a monthly basis the daily sales volume would carry an annual cost of $704,380.00, or an average weighted cost of 48.24¢/MCF. It is noteworthy that if the cost of royalty gas, which might be obtainable from the State of Alaska, was set at 56¢/MCF the differential would be 7.76¢/MCF, or approximately 16%. The annual cost differential would equal some $113,150.00. Although our rates are subject to regulation by the Alaska Public Utilities Commission it is my personal belief that, all things being equal, the rates quoted herein could be sustained throughout the life of our existing gas supply contract which terminates in 1987.

2. Service to your facility would involve a requirement for capital expenditures estimated at $475,000.00 to $500,000.00 (at projected 1977 costs). We would require a non-interest bearing advance-on-construction in the total amount of the initial investment which would be subject to refund in its entirety. The refund would be made at the rate of 10% of the total revenues derived from your account in those calendar years when such revenues equalled or exceeded $700,000.00. The refund provision would, of course, become inoperative

at such time as the initial advance had been returned. Referring back to our illustrated rates and the suggested cost of royalty gas, the annual savings of $113,150.00 combined with a yearly $70,000.00 refund on the construction advance relates to a 2.73 year pay-out, exclusive of the cost of money.

3. The service facilities installed would remain under our ownership with maintenance and operating costs to be born by us.

4. Resale of gas would be prohibited, as would the extraneous use of gas for purposes other than power generation.

5. Point of delivery would be at the downstream flange of a block valve located on the downstream side of a metering run located on your site. Delivery pressure would be 200 P.S.I.G.

6. You may recall our conversation with Mr. Dale Teel, President of Alaska Gas and Service Co. regarding a waiver which would allow us to serve you in his certificated area. He has since confirmed that he would support, before the A.P.U.C., an agreement reached between K.U.S.Co. and H.E.A. that would culminate in your withdrawal from competition for the Cook Inlet royalty gas. Such support would undoubtedly satisfy any objections the A.P.U.C. might put forth before granting us the necessary authorization to proceed.

Some of the provisions suggested herein are unique in our experience. Consequently, final committment to this proposal, or any similar plan, would necessarily involve approval by our Board of Directors.

There are other alternatives which could be considered in connection with the utilization of our currently unused gas reserves. At your convenience we will be most happy to discuss these with you or to further explore the possibilities outlined herein.

Very truly yours,

KENAI UTILITY SERVICE CORPORATION

_____

Oscar L. Thomas, Vice-President

OLT:jc

Enc.

cc: J. M. Covington
Dale Teel

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

IPNAFUB AHG

1-234980C389 03/29/76

TWX PAC LGHT LSA

215 LOS ANGELES, CA MARCH 29, 1976

PNS MR. GUY MARTIN, CHAIRMAN

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M

JUNEAU, ALASKA 99811

7580

RECEIVED
MAR 30 1975
ALASKA ROYALTY
OIL & GAS BOARD

WITH REFERENCE TO THE LETTER FROM PACIFIC ALASKA LNG COMPANY TO MR. GUY R. MARTIN, COMMISSIONER OF NATURAL RESOURCES, DATED MARCH 5, 1976. OUR OFFER TO BID ON THE PURCHASE OF THE STATES ROYALTY SHARE OF GAS IN THE NORTH COOK INLET AREA WAS LIMITED ONLY TO THOSE FIELDS IN THAT GENERAL AREA IN WHICH WE CURRENTLY HAVE THE RIGHT TO PURCHASE GAS OR MAY IN THE FUTURE HAVE THE RIGHT TO PURCHASE GAS. WE HAVE NO INTEREST IN BIDDING ON THE PURCHASE OF ANY STATE ROYALTY GAS PRODUCED FROM THE "NORTH COOK INLET FIELD"

PACIFIC ALASKA LNG COMPANY

BY P. VER PLANCK

1556 EST

IPNAFUB AHG

PHILLIPS PETROLEUM COMPANY
BARTLESVILLE, OKLAHOMA 74004 918 661-6600

NATURAL RESOURCES GROUP
Oil and Gas Liquids Division
RECEIVED
MAR 09 1975
ALASKA ROYALTY
OIL & GAS BOARD

March 5, 1976

State Royalty Gas
North Cook Inlet Field

File: 1-Ho-111-76-G&GL

RECEIVED
MAR 1976
Department of
Natural Resources

Commissioner Guy Martin, Chairman
Alaska Royalty Oil and Gas Development
Advisory Board
c/o Department of Natural Resources
Pouch M
Juneau, AK 99801

Dear Mr. Martin:

We have become aware that since the Board's decision of December 10, 1975, to take the State's royalty share of the gas in the North Cook Inlet Field and sell it to Anchorage Natural Gas, other parties have indicated a desire to purchase this gas. Assuming that the State does elect to take its royalty in kind under the lease, Phillips would be interested in an opportunity to purchase such gas. Phillips submits the following proposal to purchase all of the royalty gas from the North Cook Inlet Field.

1. Volume: The State will sell and Phillips will purchase all of the royalty gas owned by the State of Alaska as produced from the North Cook Inlet Field each day.

2. Price: 50.25¢ per million Btu until July 1, 1976;
55.5¢ per million Btu from July 1, 1976 to July 1, 1977;
60.0¢ per million Btu from July 1, 1977 to July 1, 1978.

For the yearly period commencing July 1, 1978, and each yearly period thereafter, the price will increase 2¢ per million Btu.

3. Term: Until June 1, 1984.

4. Delivery Point: At the wellhead on the platform in the North Cook Inlet Field.

5. Delivery Pressure: The pressure available at the wellhead.

The above proposal is subject to the completion of a mutually agreeable contract between the State of Alaska and Phillips. This offer is open until July 1, 1976.

If the above proposal is of interest to you, we will be happy to meet with you or your representatives and negotiate the details of the formal agreement.

Very truly yours,

John Horn

John Horn, Manager
Gas and LNG Sales Branch

JH:bla

To: Senator Kay Poland

From: George C. Silides, P.E.

Subject: Cook Inlet Land Trade

Transmitted herewith is the final Committee Report on HR 6644. I can find no substantive changes from the preliminary report you received earlier, except that this edition is much more complete.

Pages 1 - 10 represent the final language of the Bill itself as passed. The earlier edition of HR 6644 that we sent you shows, also, the original language that was deleted. Sections 12 and 17 of HR 6644 deal with the land trade between the State of Alaska and the Cook Inlet Native Regional Corporation. Section 12 describes the trade, and Section 17 sets aside the restrictions of the Alaska Statehood Act to permit accomplishment of this and any other and future trade. (Emphasis added).

Pages 10 - 14 constitute a letter of intent. It is noted that the State-Cook Inlet trade was not included in the Purpose description of the original Bill.

Pages 14 - 54 are a Section - By - Section Analysis. Section 12, which describes the trade in general terms begins on page 30. A detailed description of terms and conditions of the trade begins on page 35 and extends through page 52. The present prohibitions of the Statehood Act and the consequences of its being amended are recited at the bottom of page 34 and the top of page 35.

Pages 54 - 58 describe changes in existing law that would be caused by HR 6644. Section 17 on page 56 is germane.

Pages 58 - 85 include reports by the various federal departments concerning their feelings on the measure. Not all are favorable. The Department of Agriculture specifically objects to the inclusion of Section 12 on the basis that the section reopens conflicts that ANCSA was intended to resolve.

The Congress had taken due note of the existing debate as to the propriety of the State's involvement and of the nature and extent thereof. The Governor has promised that he will not implement the terms of Section 12 of HR 6644 unless the Legislature concurrs. Section 12 (c) (3) (i) (center of page 8), calls for a report by the Secretary of the Interior to Congress by April 15, 1976. The Legislature's decision must reach him in time to prepare that report. He reserves until December 18, 1976 to make other

amends to Cook Inlet if you decide to reject the Administration's proposal as set out in HR 6644.

We are unaware of the form in which the Governor will submit his request for your approval of his administration's actions. It may be in the form of a Resolution. We suspect, however, that since the prohibition against the transference of mineral rights and the equal value provision still remain as part of the Alaska Statutes, he will submit a Bill amending Title 38.

I suggest that the Congressional Committee Report and this letter of transmittal letter be forwarded to the Legislature's head of legal section for his examination and comments, especially concerning any extinguishment of the State's rights by this arbitrary and unpublicized action of the Congress at the request of our Administration.

TESTIMONY OF ROY HUHNDORF, PRESIDENT
COOK INLET REGION, INC.
BEFORE JOINT HOUSE-SENATE RESOURCES COMMITTEES

Chairman Poland, Chairman Anderson, and Members of the Committees: I am the President of the Cook Inlet Region, Inc., a Corporation that consists of more than 6,000 Native Shareholders, most of whom are residents of the State of Alaska. I welcome the opportunity to appear before you to discuss the "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area."

I come here as part of a long journey, a journey to secure for the people of Cook Inlet Region their land entitlement under the Alaska Native Claims Settlement Act.

The land that Cook Inlet obtains under the Alaska Native Claims Settlement Act is its birthright. We must protect that Birthright. If we failed to protect that birthright, through wise selection of lands, the historical claims of our people might be forever lost or slowly reduced to nothing. The Region would be taxed out of existence shortly after 1991. There would not be a viable Corporation.

In 1972, after the Act was passed, the Secretary withdrew mountaintops and glaciers for the Region. The State had already patented most of the low-lying land in the Region. Virtually all of the remaining low-lying land was committed to the State by the Secretary in September, 1972, when Alaska vs. Morton was settled. This was without consultation with the Region even though our interests were substantially affected.

The State had taken the land that the Federal government should have withdrawn for Cook Inlet under the Act.

This was the situation faced by our Shareholders for over two years. In 1974, Senator Jackson and Congressman Meeds promised legislative relief for Cook Inlet Region. It appeared that a just solution could be worked out. On the eve of such a solution, as it became clear that there was Federal support for our cause, Cook Inlet Region was urged by the State to change its legislative strategy so that the interests of the State's citizens would be better harmonized with the interests of Cook Inlet's shareholders. The Borough urged the Region to change its legislative goals and remove the Campbell Airstrip, Point Woronzoff and other lands from consideration in the draft legislation then before Congress. In effect, the Region was urged by all sides not to look selfishly at its claims for a just settlement of its entitlement under the Alaska Native Claims Settlement Act. The Region was urged to work out with all the competing interests what would be a rational and thoughtful approach in which public needs could be melded with private needs.

This was one of the most difficult periods in the Corporation's history. We were being asked to abandon our past course of action and set out on an entirely new approach, one where we would be asked to put the claims of the Region in the context of the general public interest.

Let me recount some of the hurdles that this new approach placed in our way:

1. We were being asked to abandon claims to Point Campbell, Campbell Airstrip and Point Woronzoff in light of the Boroughs interests.

2. We were asked to abandon claims to the Swanson oil

fields so that the present income of the State of Alaska could be maintained.

3. We were asked by environmental groups to abandon claims that would affect the recreational interests, not only of Alaskans, but of the American public.

4. We were asked to abandon claims that would adversely affect wildlife habitats or that would impair the quality of water.

5. We were asked to abandon claims to lands, even though they were withdrawn for the Region, because they were located near potential capital sites.

The Region agreed to work for a thoughtful general approach that would demonstrate that the interests of the Native Corporations would be consistent with the interests of the State as a whole. It was critical to show that the Native Corporations were concerned with orderly growth.

This approach meant more than eight months of constant negotiations. Working out a thoughtful settlement has had its physical and mental toll on the volunteer members of our Board of Directors who gave unselfishly of their time.

We bargained in good faith. We followed the rules imposed by the State. I do not think we should be penalized for that. We thought we had reached a settlement last December. Now, Madam Chairman, we fear that the bargaining rules may be changing after a settlement has been reached.

To be sure, we are not altogether pleased with the outcome of the settlement. We have had to shift more than half our land outside the boundaries of our Region against our will, and only with the deepest tolerance and concern by our sister Regions. The total surface land to which the Region is entitled has been reduced. We have agreed to a greater state and federal role on some of our lands than would be the case under the Act.

Our Village corporations were required to abandon selections in Lake Clark. We surrendered claims to other very valuable and important lands withdrawn for our selection. These are points that are overlooked. It is also overlooked that the Native people lived on and occupied all the low-lying land in this area. The Act provides that the land for the Native Corporations should be similar to Village land. Our Region is the one Region where the State had patented almost all such land for itself.

Also overlooked are some of the benefits to the State in the agreement. In the absence of the agreement there are certain hazards for the State. Some of the problems faced by the State in the absence of a negotiated settlement are as follows:

a) elimination of a steady stream of income to the State from producing federal fields.

b) elimination of the chance to receive immediately the Campbell Air Strip for the Anchorage Borough.

c) The possibility that the Ninth Circuit or the Congress will set aside the 1972 Agreement between the State and the Federal government on the ground that the agreement breeched the federal trust responsibility to Cook Inlet Region.

d) Long and painful litigation for every piece of land to which Cook Inlet is entitled.

In addition and conversely, the State adds substantially to its Statehood entitlement. It improves its bargaining position in the upcoming Section 17(d)(2) negotiations. The Agreement also provides the State with its only coastline on the west coast of Cook Inlet, South of Tuxedni Bay.

More generally, the agreement seeks to improve land holding patterns from the Talkeetna's to the mouth of the Kvichak.

Madam Chairman, I want to, at this time, also touch on a few issues that have become of particular concern.

The first is the relationship between this agreement and the Statehood Act. I have made it clear to the Chairman that we did not seek an amendment to the Statehood Act nor did we consider such an amendment necessary to carry out the terms of our Agreement. The House Judiciary Committee in the House Journal for April 21, 1972 explaining A.S. 38.95.060(b), suggested that subsurface transfers could be accomplished by three way transfers with the Secretary of the Interior. We relied on that suggestion and on our interpretation of Section 6(i) of the Statehood Act. We maintain that there was no need for an Amendment to the Statehood Act for our transfer. We fought to have the amendment removed from the Cook Inlet provision of the statute.

Second, there is the question whether this transfer is a bad precedent. No Region in Alaska had the concentration of State patented lands that faced Cook Inlet Region. In the first ten years after statehood when these lands were selected by Alaska, the State was already on notice that the Natives had claims to such land. It is only because more than five million acres of low lying

land had been patented to the State in Cook Inlet Region that the federal government and the Congress looked to the State for participation in the solution. It is doubtful that this legislature will find another instance where this is the case.

Third, there is the question of procedures for such land trades. I assure you that we support legislative efforts to make clearer the procedures to be followed by a Native Corporation seeking to work with the State. We have suffered because of the lack of such procedures. I think Cook Inlet did the best that could be done under the circumstances. We think such procedures should provide guidance on the following issues:

a) what steps should be taken to consult with local governments where land to be traded is in their vicinity.

b) at what point should the intention of the State to engage in exchange negotiations be made public and what steps should be taken to notify the public.

c) what role should the public play, if any, in exchange negotiations.

d) at what point should tentative agreements be made public.

e) what size transfer agreement should be referred to the Legislature.

f) under what circumstances, if any, should there be subsurface transfers. And if there can be such transfers, what special procedures should be developed.

g) how should value determinations be made, particularly for large tracts where there are no present obvious ways of calculating value.

Fourth, there is the question of the Beluga coal lands. These lands were a critical part of the bargain. The State precluded all known producing oil fields. The Cook Inlet Region concurred if the Beluga lands were included. We then agreed, after very hard bargaining, to the exclusion of over 75% of the coal-bearing lands because they had mental health status.

I believe that this was a fair bargain. I also believe that erroneous figures have been employed to inflate the loss to the State and the gain to the Cook Inlet Region. The coal in the Capps Glacier lease is not clearly economic in the short run. It is uncertain that it will be developed before the coal in the Chuitna lease (coal that remains in State ownership). If that is so, the modest figures in the State geology report may, themselves, be too high.

It should also be made clear that the State has already transferred to private parties the right to extract the coal. If the State lost its coal future, it is not because of this transaction, but because of the leases it entered into some years ago.

Finally, it has already been made clear from preliminary talks with some of the lessees that Cook Inlet will not be able to profit from the coal unless it contributes, through capital, to the acceleration of development. Our feeling is that we will be a good and helpful partner as lessor; better we think, for the economy than the State as a partner.

And finally, Madam Chairman, I wish to summarize by saying that This agreement is a difficult and complex one. It represents months of negotiations, of consultations with the Anchorage Borough, with the various interests that are involved in the future of Alaska. It has been praised by Congressman Don Young. The Alaska delegation unanimously supported it.

It passed the Senate and House of Representatives unanimously.

I am glad that the Agreement is the subject of these discussions under your careful guidance. I am glad that questions as to the Governor's authority will be clarified by the Legislature's action.

Many technical questions will arise as you go through your process of deliberation. We are ready to answer these questions.

Our very future is at stake. We have done everything that we think could reasonably be expected of us. We are now asking for your support and approval.

Requested by:
Prepared by: Land Trust Fund Counsel
For Reading: 2/10/76

ANCHORAGE ASSEMBLY RESOLUTION ON COOK INLET LAND TRADE PROPOSAL

(SEE BOTTOM PAGE 2)

ANCHORAGE, ALASKA

UNANIMOUSLY ADOPTED

AR NO. 8-76

10 TO 0

A RESOLUTION OF THE ANCHORAGE ASSEMBLY EXPRESSING ITS CONCERN REGARDING THE DISPOSITION OF CERTAIN LARGE TRACTS OF PUBLIC LAND WHICH ARE THE SUBJECT OF PUBLIC LAW 94-204, AN AMENDMENT BY THE U.S. CONGRESS TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971.

THE ANCHORAGE ASSEMBLY RESOLVES:

Section 1. The Congress of the United States has recently cacted Public Law 94-204, containing certain amendments to the Alaska Native Claims Settlement Act of 1971, one of which, at Section 12 of the Act and entitled "Cook Inlet Settlement", would have the effect of trading certain lands and future rights in lands between and among the federal government, the State of Alaska, and Cook Inlet Region, Inc., a native regional corporation, for the stated purposes of consolidating rational land ownership patters and settling certain pending litigation in the public interest.

Section 2. The Cook Inlet Settlement section of P.L. 94-204 provides that, if the Alaska Legislature disapproves of the Cook Inlet Settlement prior to April 15, 1976, that settlement shall be null and void and the options of the Congress to fashion an appropriate remedy shall not have been foreclosed.

Section 3. The great bulk of lands and land rights so exchanged between the parties lie outside the boundaries of the Anchorage Municipality, and do not directly affect the property interests or planning authority of the Municipality; however, certain specific tracts of land identified in P.L. 94-204 directly affect present and future property interests of this Municipality

and may consequently determine the direction of future growth and development which the Municipality will undergo and the amenities and necessities of life which will exist here for future generations. These tracts are the Campbell Airstrip Tract, the Point Campbell Military Reservation, the Point Woronzof FAA Reservation, and the Goose Lake Tract.

Section 4. The Municipality of Anchorage and its predecessors have long attempted to insure that the Campbell Airstrip Tract remains intact in public ownership as the Far North Bicentennial Park, both for its recreational and its watershed attributes. More recent efforts by local governments have stressed the importance of retaining the Goose Lake Tract, Point Campbell Reservation, and Point Woronzof Reservation in public ownership to guarantee that non-intensive land uses compatible with existing adjacent uses will occur in these areas in the future. While public ownership of each of these unique tracts of land at the local, State or Federal level is imperative, the Municipality of Anchorage believes that it is best qualified and equipped to plan and to manage these tracts in the public interest to meet the open space, watershed, recreational, institutional and cultural needs of a growing Anchorage, and this belief is hereby restated in this Resolution.

Section 5. Insofar as P.L. 94-204 may affect the future disposition and use of the Campbell Airstrip Tract, the Point Campbell Military Reservation, the Point Woronzof FAA Reservation and Goose Lake Tract, the Anchorage Assembly strongly urges that the Alaska State Legislature approve the Cook Inlet Settlement portion of P.L. 94-204 to insure that the public interest in

retaining these large, undeveloped tracts of land in continued public ownership is fully protected.

Section 6. The Municipal Legal Office has, at the request of the Assembly, monitored the progress of negotiations regarding the proposed agreement entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area", and the legal office is hereby directed to continue to monitor the progress of said agreement and to report to the Municipality any changes which may affect those tracts of land which the Assembly has determined by this Resolution to be significant to the public interest.

Section 7. The Municipal Clerk is hereby directed to inform the Governor, the President of the Senate, the Speaker of the House, the Chairpersons of the House and Senate Resource Committees, and each member of the Anchorage Legislative delegation of this action by the Municipal Assembly, and to provide a full text of this Resolution to each of such persons.

PASSED AND APPROVED by the Anchorage Assembly this 10th day of February, 1976.

_____
Chairperson

ATTEST:

_____
Municipal Clerk

APPROVED this ____ day of _____, 1976.

Federal-State
Land Use Planning Commission
For Alaska

731 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

REC'D CIRI FEB 2 '76

ROUTE TO:	Info	Action	Initial	Date
PRESIDENT	✓			
GEN. MANAGER				
LAND DEPT.	✓			
VILLAGE COORDINATOR				
PUBLIC RELATIONS				
LEGAL DEPT.	✓			
CENTRAL FILES		1		
COPY FOR BOARD MBRS.				
COPY FOR VILLAGES				

October 30, 1975

Honorable Henry M. Jackson
Chairman
Senate Committee on Interior
and Insular Affairs
Attn: Steve Quarles
3106 Dirksen Building
Washington, D.C. 20510

Dear Chairman Jackson:

It is our understanding that the Interior Committee will soon commence its markup of certain proposed amendments to the Alaska Native Claims Settlement Act. With this in mind, I am writing to communicate the Commission's strong support for amendatory legislation relating to the land entitlement of Cook Inlet Region, Inc., and its constituent villages, as such legislation is described in the recently announced agreement between Cook Inlet and the State of Alaska.

For the past three years, the Commission has been actively involved in efforts to resolve the land-related problems which have confronted Cook Inlet and its constituent villages. These efforts have taken the form of technical assistance to the regional corporation and, more recently, to the State of Alaska, and recommendations to the Secretary of the Interior with respect to the location and quantity of withdrawals needed to help satisfy the requirements provided in Section 11(a)(3) of the Settlement Act. Most recently, the full Commission has considered the tentative agreement arrived at between Cook Inlet and the State of Alaska. On the basis of this consideration, which took place at a Commission meeting held on October 24-25, 1975, I have been authorized to communicate our unanimous support for the approach taken in the proposed agreement.

The Commission's position is premised on the following principal considerations. First, in our opinion, a significant portion of the acreage presently withdrawn for possible selection by Cook Inlet does not meet the qualitative criterion provided in Section 11(a)(3) of the

Settlement Act. In arriving at this conclusion, we are cognizant of the Federal District Court's ruling in Cook Inlet v Morton, and are constrained to disagree with that portion of the ruling which relates to compliance with the criteria specified in Section 11. Second, the land status pattern in the Cook Inlet region, which encompasses large Federal withdrawals and significant acreage in State and private ownership, indicates that it would be very difficult for Cook Inlet to obtain a satisfactory land entitlement in the absence of the land exchanges and other mechanisms provided in the pending agreement. Third, implementation of the agreement would greatly improve land management within the Cook Inlet region by consolidating Federal, State, and Native ownership in areas which aptly reflect the interests of the various parties. Thus, for example, the agreement would result in Native ownership of certain areas on the Kenai Peninsula which, by virtue of their location, soils, and other characteristics, appear suitable for private settlement and development. Similarly, the State would obtain additional lands in the Bristol Bay watershed, which is of critical importance to the State for its fishery and recreational values, and the Federal government would be assured of a viable management unit in the Lake Clark area, which has been proposed for national park status pursuant to Section 17(d)(2) of the Settlement Act. Improved management and ownership patterns would also result in other areas of the Cook Inlet region, including the Talkeetna Mountains and the Kenai Peninsula. Fourth, the proposed agreement would lessen the impact of private ownership on the Kenai National Moose Range by reducing the total acreage that might otherwise be transfered to Native corporations and by requiring that certain protective measures be taken in a significant portion of the lands that would be conveyed. In short, implementation of the agreement would permit the creation of rational patterns of land management and ownership which reflect the varied interests of the parties involved. Neither the administrative nor judicial alternatives afford the flexibility which is necessary to accomplish this result.

In supporting the proposed agreement, the Commission does not mean to minimize the technical and other problems which must be overcome prior to its final adoption. For example, there are certain legal issues which must be addressed. However, the research conducted by our staff and more extensive work performed by attorneys for Cook Inlet and the State indicate that solutions to these problems do exist. Moreover, since the agreement would authorize Cook Inlet to select lands within the boundaries of certain other regional corporations, the views of those corporations must be considered with great care, and an effort must be made to insure that in the process of improving land ownership and management patterns in the Cook Inlet region, we do not jeopardize

the opportunity to create sensible patterns in other areas of the State. In addition, full participation on the part of Cook Inlet's constituent villages and groups will be required, for the agreement calls for the relocation of certain withdrawals made for their benefit. We believe that the participation and cooperation of all of the parties to the agreement and other affected Native corporations will create an atmosphere in which possible problems can be resolved and the objectives of the current proposal can be successfully achieved.

Thank you for your consideration of this correspondence.

Sincerely,

Burt Silcock /ar

Burton W. Silcock
Federal Co-Chairman

cc: Senator Ted Stevens
Senator Mike Gravel
Royston C. Hughes, Assistant Secretary, Program Development and Budget
Ken Brown, Legislative Counsel, Department of the Interior
Guy Martin, Commissioner, State Department of Natural Resources
Michael C.T. Smith, Director, State Division of Lands
Sam Kito, President, Alaska Federation of Natives
Roy Huhdorf, President, Cook Inlet Region, Inc.

STATEMENT OF JOHN BORBRIDGE, JR.
PRESIDENT OF SEALASKA CORPORATION BEFORE THE JOINT SENATE-HOUSE RESOURCES COMMITTEE HEARINGS
REGARDING THE COOK INLET REGIONAL CORPORATION LAND TRADE

It gives me a great deal of pleasure to present this statement in support of the proposed land trade involving the State of Alaska, the Department of Interior and the Cook Inlet Regional Corporation.

The passage of the Alaska Native Claims Settlement Act of December 18, 1971, was a response by the Congress of the United States to the obligation to define the precise nature and extent of the land rights then being asserted by the Indians, Eskimos and Aleuts of Alaska. That the legislation was enacted and that justice was done to the aboriginal claimants of the land is a tribute to our system of government. That the legislative product is imperfect and does contain certain ambiguous or incomplete provisions appears to be a result of a system of compromise that must function under the stress of other pressing business in the congressional forum.

The proposed land swap is the final chapter in efforts to completely identify the land to which Cook Inlet Region, Inc. should receive title.

It represents the final chapter of efforts to ensure that the Alaska Native Claims Settlement Act objective of achieving justice occurs.

I am frankly impressed with the good faith efforts being exhibited by the parties to the proposed land swap and the thoroughness of their preparations. It is a pleasure to note the apparent desire of the State of Alaska and the Department of Interior to ensure, to the degree possible, that the ultimate objectives of all parties are realized. The process of selecting land, a once-in-a lifetime responsibility, is a difficult and sufficiently challenging task when only one party to the transaction must be satisfied. I am pleased with the success experienced by the Cook Inlet Region, Inc. in working with the various interests concerned about this proposed transaction. The patent effort by this Corporation to ensure compatibility between its desires and the diverse interests expressed by other citizen organizations bodes well for the future of similar regional corporations. This corporation proceeded in a responsible fashion which is a compliment to its leadership.

It seems appropriate to us for land trades to be made between the Native regional corporations and the State or Federal government

so as to provide the optimum resource management capabilities for the corporate and governmental agencies involved. Congress quite obviously envisioned the possibility of land trades inasmuch as Section 22(f) of the Alaska Native Claims Settlement Act provides that the federal government is authorized to exchange any federal lands or interest therein in Alaska for lands or interest therein of the village corporation , regional corporations, individuals or the State for the purpose of facilitating the management or the development of the land. Subsequently, in the Alaska Native Claims Settlement Act Amendment commonly called the Omnibus Bill, Congress further underscored this ability to make land trades between the Federal and State governments and the regional corporations through specific approval of the land trade presently before this committee.

While it might be expected that Sealaska Corporation would support this land trade due to the involvement of the Cook Inlet Regional Corporation, a sister corporation, we feel we can also support the land trade on the basis of our dealings both with the Department of Interior and the Alaska State Department of Natural Resources, both of whom are staffed with dedicated people whose primary purpose

appears to be to protect the interests of their respective governmental agencies. Sealaska Corporation's dealings with the Department of Interior and the Alaska Department of Natural Resources indicates a propensity by those two agencies to be overly assertive with respect to public easements on Native lands reserved by the Department of Interior in the interim conveyances issued to Native corporations, and the Alaska State Department of Natural Resources continued insistence on a 25-foot wide coastal easement on all shoreline waters. In this instance, it is a pleasure to express our approval of the role assumed by each.

In summary, we believe that not only the Cook Inlet Regional Corporation, but also the United States Department of Interior and the State of Alaska Department of Natural Resources has completely reviewed the land trade and each finds it beneficial to enter into the trade. As a consequence, Sealaska Corporation supports the proposed land trade between the State of Alaska, United States Government and the Cook Inlet Regional Corporation, Inc. as set forth before your joint committees during these hearings.

Special To The Times - By Harold H. Galliett, Jr.
First of a Series

THE GREAT COAL FRAUD

Of what are we defrauded?

A clique of top state officials conspires to give the Cook Inlet Native Corporation the following immensely-valuable state lands:

1. 13.5 townships (311,000 cres) of patented state coal land in the Beluga coalfield, including the critical deep-water port and industrial area essential to Alaska coal processing and shipment. I have estimated the recoverable coal in these townships from work by Barnes, McGee, Hackett and Grantz and from private data. Using a 50 percent recovery factor applied to coal in seams over 2 feet thick and less than 2,000 feet deep, I estimate that there are at least 5 billion tons - and possibly as much as 14 billion tons - of recoverable coal in these townships.

2. 5 townships (115,000 acres) of patented or tentatively-approved state coal land in the Homer coalfield. I have estimated the recoverable coal in these townships from work by Barnes and McGee and from private data. Using a 50 percent recovery factor applied to coal in seams over 2 feet thick and less than 2,000 feet deep, I estimate that there are at least 7 billion tons - and possibly as much as 12 billion tons - of recoverable coal in these townships.

3. 1.2 townships (28,000 acres) of the most valuable tracts of patented or tentatively-approved state land in various areas of the Matanuska-Susitna Borough. The specific tracts to be given away have not been made public, but, if the profligacy of the rest of this deal holds, we can expect these tracts to include Point Mackenzie port lands and proven coal lands of great value. I have estimated the recoverable coal in these most valuable tracts from work by McGee and from private data. Using a 50 percent recovery factor applied to coal in seams over 2 feet thick and

less than 2,000 feet deep. I estimate that there are at least 1.5 billion tons - and possibly as much as 3 billion tons - of recoverable coal in these tracts.

4. Other, smaller tracts are also involved.

At a coal royalty of only 20 cents per ton, we will be losing 2.7 to 5.8 billion dollars in future coal royalties. At a price of only $10,000 per acre for critical deep-water port and industrial land, we will be losing 100 to 150 million dollars in future state land income. At a price of only $2,000 per acre for Matanuska-Susitna land, we will be losing over 50 million dollars in future state land income. In adding it all up, we stand to lose the appalling sum of 2.8 to 6.0 billion dollars in future state income because of this deal!

We are being gulled into giving away an enormous resource of readily-accessible, easily-mined coal of phenominally-low sulfur content. This coal is on the threshold of development to replace declining US production of oil and gas and to reduce our national dependence on foreign oil.

We are asked to hand over the critical deep-water port and industrial area essential to the future processing and shipment of not only Beluga coal, but also Susitna coal, Matanuska coal, Nenana coal and other resources from the Interior and North Slope! We are importuned to dispose of routes to Mental Health coal lands and rights-of-way for road and railway extensions, pipelines and water supply works.

Are we expected to hold still for this outrageous defalcation without a map, without a legal description, without a development plan, without a geological report, without a drilling program, without a valuation? Are we to be kept in the dark to the eleventh hour, so that this robbery can be railroaded through Congress?

Under the circumstances, we ordinary citizens may be forgiven for demanding a searching, unhurried, no-nonsense investigation by our legislature.

Next: What kind of "Gold Brick" do we get?

Special To The Times - By Harold H. Galliett, Jr.
Second of a Series

THE GREAT COAL FRAUD

What kind of "Gold Brick" do we get?

In return for immensely-valuable state coal lands, which were described in the first article of this series, the Cook Inlet Native Corporation proposes to give the state 31 townships (714,000 acres) of almost-inaccessible back country in the following areas:

1. Mountains and hills near the canyon of the Susitna River. This land surrounds a federal power site withdrawal for the Susitna power project, and is almost worthless except as a state-financed hunting preserve. Most of the poor-best of this area has been selected by Native Village Corporations.

2. Hills and mountains northwest of Lake Clark and Lake Iliamna and the rocky coastline, hills and mountains fronting on Kamishak Bay. This land is almost worthless, except as a state-financed hunting preserve.

The Department of Interior "magnanimously" proposes to allow the state to use part of our statehood acreage entitlement to select 30 townships (691,000 acres) of hard-to-reach hinterlands in the following areas:

1. Lake Clark - Lake Iliamna watershed. Local Native Village Corporations have selected almost all of the waterfront land on Lake Iliamna and about one-quarter of the waterfront land on Lake Clark. The Department of Interior proposes to retain about one-quarter of the waterfront land on Lake Clark in a new national park. Native allotment claims and private hunting lodges occupy another significant fraction of the waterfront land on Lake Clark.

   The state owns the beds of all navigable lakes, rivers and streams in the Lake Clark - Lake Iliamna watershed. The famous red salmon from this area spawn in the lakes, rivers and larger streams. The state has jurisdiction over fish and game, and has adequate authority to protect fish and game on both public and private lands. The state will continue

to govern, tax and serve citizens in the area. The area and its citizens cannot be somehow severed from the state by proposed improvements in federal management of the hinterlands.

Therefore, "control", as touted by top state officials, of the Lake Clark - Lake Iliamna watershed, even by state acquisition of all 30 townships in this one area, is impractical. Ownership of the entire watershed would require a far greater commitment of statehood selection entitlement than the proposed 30 townships. Clearly, this schemer's dream of somehow wresting "control" of the entire watershed is impractical and unnecessary: Impractical because of federal, Native and other ownership of nearly all waterfront land; unnecessary because of existing state ownership, jurisdiction and authority.

This land is almost worthless except as a state-financed hunting preserve.

2. High mountains and glaciers around Chakachamna Lake. This land surrounds a federal power site withdrawal, and is so rugged as to be almost worthless, even for hunting.

   Other, smaller tracts are also involved.

Thus, for 19.7 townships (454,000 acres) of state coal lands worth 2.8 to 6.0 billion dollars in future state income we are to receive 31 townships of almost-inaccessible back-country and hard-to-reach hinterlands which are nearly worthless except as a state-financed hunting preserve!

Next: Who gains? Who loses?

Special To The Times - By Harold H. Galliett, Jr.

Third of a Series

THE GREAT COAL GIVEAWAY

Who gains? Who loses? And how much?

In return for immensely-valuable state coal lands, the Cook Inlet Native Corporation proposes to give the state almost-inaccessible backcountry and hard-to-reach hinterlands. The state coal lands to be given away are estimated to be worth $2.7 to $5.8 billion in future coal royalties, based on present royalty rates. The surface estate to be given away is estimated to be worth $200 to $400 million in future state income, based on present land prices.

The estimates given above look far to the future. To determine the present value of future receipts, we need first to increase present royalty rates and present land prices by an escalation factor representing inflation plus real increase in the price of energy resources and land. We also need to decrease future receipts at a discount rate representing inflation plus the real cost of hiring money.

Foreseeable improvements in coal extraction, conversion and transportation; increase of world population and industrialization; inexorable depletion of US and world oil and gas - all these factors foretell a rapid increase in coal royalties. For example, from 1967 to 1973 state coal royalties in the Beluga coalfield increased from 5 cents to 30 cents per ton.

Future state coal royalty rates will probably be based on a percentage of pit-head price backed in from the market. And, world oil, which paces the price of coal, is on an escalator from which there is no exit. Price of surface estate at state land auctions has also increased rapidly.

Consequently, I estimate that the escalation factor will offset the discount factor, and that present value of future income may be calculated with sufficient accuracy using present royalty rates and present land prices.

There are about 75,000 Natives enrolled in the 12 Native regional corporations located in Alaska. About 6,500 of these Natives are enrolled in the Cook Inlet Native Corporation. The population of Alaska today is

about 385,000 persons. Under the Alaska Native Claims Settlement Act, 70 percent of all revenues received by each regional corporation from subsurface estate patented to it under the Act shall be divided among all 12 regional corporations according to the number of Natives enrolled in each region. Native corporation profit, after effective taxes and administrative costs, is estimated at 50 percent of coal royalties and 40 percent of income from surface estate. The present value of future coal royalties and the present value of future income from surface estate to be lost by the state to the Cook Inlet Native Corporation is estimated at $2.7 to $5.8 billion and $200 to $400 million, respectively.

Who gains?

From the premises above, I calculate as follows:

1. Each enrolled Native in the 11 Native corporations in Alaska other than the Cook Inlet Native Corporation, will receive an increase in the present value of his or her stock of from $12,600 to $27,100. Thus, for a family with only three enrolled Native members, this generous gift will total $37,800 to $81,300!

2. Each enrolled Native in the Cook Inlet Native Corporation will receive an increase in the present value of his or her stock of from $87,200 to $185,500. Thus, for a family with only three enrolled Native members, this munificent endowment will total $261,600 to $556,500!

Who loses?

Each citizen loses in increased state taxes or in benefits which must be denied by our state government.

I estimate coal extraction will require 100 years, and the state will lose an average of $29 to $62 million in 1975 dollars during each year of that century.

And who will pay for the impact of coal development?

Next: Conflict of interest?

Special To The Times - By Harold H. Galliett, Jr.

Fourth of a Series

THE GREAT COAL GIVEAWAY

Recent Events

On January 2, 1976, President Ford signed into law - over objections by the Treasury, the Office of Management and Budget and the Department of Agriculture - an Omnibus Bill amending the Alaska Native Claims Settlement Act. This Omnibus Bill also amends our Statehood Act by removing the basic protection that the state retain mineral rights in land exchanges. To cap this piece of politically-expedient, election-year legislation, the Secretary of Interior is given authority to waive the "equal value" provision in future exchanges of state land.

Earlier proposals by the Hammond administration have been changed, voted by Congress and signed into law with neither adequate notice nor opportunity for response by Alaskans. Nevertheless, the Omnibus Bill, as sent to the conference committee, does give the State of Alaska a chance to accept or reject the controversial Cook Inlet land swap.

Most of the Omnibus Bill amending the Alaska Native Claims Settlement Act helps our Native people without hurting the other 80 percent of Alaskans. However, the controversial land swap destroys the compact integrity of patented state lands in the heartland of our state, creates conflict in land management where none existed, discourages settlement except by leasehold tenants on terms dictated by Native corporations, and denies 80 percent of Alaskans the income and responsible state control of an empire of coal on the threshold of development.

The consent of the State of Alaska to the controversial Cook Inlet land swap must be given, if at all, within 60 days of the commencement of the 1976 session of the Alaska legislature. Surely, it is arrogant that so short a time is allowed our legislature to evaluate a giveaway of energy resources at least equal to Prudhoe. However, the strategy of the proponents of this dissipation of the common property is to keep us in the dark, and to ram this infamous give-away through before common sense can prevail. For example,

it took two weeks to get a copy of the bill as voted by the House, and that copy was incomplete. It is unlikely that Alaskans will have the printed Omnibus Bill to study until well after our legislature convenes.

One or more bills will soon be filed with our legislature to give the consent of the State of Alaska to the controversial Cook Inlet land swap. Our legislature may then (1) consent to the vague and indefinite terms of the Omnibus Bill, (2) consent to a hard and specific bargain within the outlines of the Omnibus Bill, (3) refuse to consent or (4) do nothing. If the legislature does nothing, I expect Governor Hammond will proceed without legislative approval, unless restrained by the courts.

Next: How will the coal be mined?

Special To The Times By Harold H. Galliett, Jr.

Fifth of a Series

THE GREAT COAL GIVEAWAY

How will the coal be mined?

Recoverable coal which may be given away by the Hammond administration in the infamous Cook Inlet land swap, is estimated at 13 to 29 billion tons. At a royalty of only 20 cents per ton, this coal is estimated to be worth $2.7 to $5.8 billion in future state income, or about $7,000 to $15,000 for each man, woman and child in Alaska today!

In tne deeper parts of the Cook Inlet basin, the coal-containing Kenai formation, which contains numerous thick and thin coal beds, is more than 20,000 feet thick. Oil well logs, coal drilling, outcrop measurements and geo-physical surveys are available today for useful estimates of coal resources. Contour maps of coal thickness have been plotted. The estimated coal resources in the entire Cook Inlet Basin exceed 1.3 trillion tons, but most of this coal is either beneath Cook Inlet, covered by thick glacial deposits, below a depth of 2,000 feet, or distant from deep tidewater.

In the Beluga area, near deep tidewater, enough coal has been found in the shallow Capps and Chuitna beds alone, to keep two, 6 million ton-per-year surface mines going for over 50 years. Stanford Research Institute estimates that the Capps beds will be 30 percent cheaper to mine than the Chuitna beds. Unfortunately, the Hammond administration proposes to give the Capps beds to the Cook Inlet Native Corporation.

No matter how large our coal resources may be, these resources have little value until we can foresee a regular progression of future technologies by which the coal can be mined at a net benefit.

Today, our coal must be mined by surface methods. Colossal bucket-wheel excavators will remove soft over-burden. Huge power shovels and draglines will excavate hard materials and coal. Conveyor belts will move the excavated materials. Belt stackers will spread the over-burden on mined-out areas. Under our climatic conditions, it will be relatively-easy to establish forest or grass-land on recontoured areas.

The quality of surface restoration and the effectiveness of coal conservation will depend on land ownership and future laws. If the state owns the land, we may expect mining to be controlled in the long-term public interest.

Coal recovery by surface mining methods may be as high as 90 percent. Each 6 million ton-per-year surface mine will create about 200 mining jobs with top pay and benefits.

In favorable locations, underground mining will begin soon after surface mining. Sophisticated continuous mining machines and longwall methods will be used. Coal recovery will range from 50 to 90 percent.

Underground gasification of coal will begin soon after conventional mining. Steam and oxygen will be used to drive the reaction. The raw product will be synthesis or fuel gas consisting of hydrogen and carbon monoxide with impurities.

In one method of underground coal gasification, high-speed tunnel boring machines will open the coal beds by boring a grid of tunnels in the coal. Some solid coal will be produced by tunnel boring, and this will pay most or all of the cost of opening the coal beds. Shafts, pipes, stoppings and controls will be installed to direct gas flow and to guide the firefront. The burn will be lit, steam and oxygen supplied, and coal gas recovered. Roof let-down will follow the firefront.

Coaly-shale and coal in thin beds - values usually lost in conventional mining - may be recovered by underground gasification. Coal recovery should range from 50 to 90 percent. Safe mining depths will be moderately greater than for conventional coal mining.

In another method of underground coal gasification, wells will be drilled into the coal. Adjacent wells will be linked by hydraulic fracturing. The burn will be lit, steam and oxygen injected and coal gas withdrawn from adjacent wells. Coal recovery may be less than 50 percent, but this and similar underground gasification methods are expected to recover coal from deep coal beds which can be mined in no other way.

Next: Oil from coal! Who needs OPEC?

COOK INLET LAND EXCHANGE

RECOMMENDATIONS

Cook Inlet Trade

After its consideration of the major issues and aspects of the proposed settlement, Commissioner James Hurley moved and Commissioner Celia Hunter seconded "That this Commission recommend to the Joint Resources Committee of the Alaska Legislature that appropriate legislation be passed authorizing the Cook Inlet settlement under the terms and conditions of P.L. 94-204." The motion carried unanimously, with Federal Co-Chairman Burton W. Silcock, Acting State Co-Chairman George W. Roger, and Commissioners James J. Hurley, Celia M. Hunter, Phil R. Holdsworth, Joseph H. FitzGerald, John W. Schaeffer, and Richard A. Cooley voting "aye".

The recommendation made, the Commission proceeded to address guidelines for future land exchanges. Summarized below are tentative general guidelines accepted by the Commission.

Future Land Trades

It has become increasingly apparent that a series of trades and exchanges will be necessary to adjust land ownership patterns established by the Statehood Act to enable sound land use planning and management by all involved. Both the Commission and members of the State Legislature have recognized the necessity for legislation which would guide and facilitate the exchange process. With clearer ground rules, much of the complexity and difficulties experienced in the Cook Inlet land trade could be reduced.

The Cook Inlet experience offers an excellent test case which should be carefully studied in developing guidelines for future land trades. The basic elements for such exchange legislation, as suggested by the Cook Inlet experience, are as follows:

1. Land trades should further the establishment of land ownership patterns that will enable planning and management to foster the wise use and disposition of land and land resources.

2. Land trades should result in an equitable exchange of values between the parties involved. In determining equity, intangible values such as sound land use and management as well as social and economic benefits should be included.

3. Trade procedures should include consultation with affected local governments and relevant State and Federal agencies, as well as a specific program for public consultation.

The Commission plans to analyze the Cook Inlet trade process in detail, as well as to review land trade and exchange procedures utilized elsewhere. On this basis, the Commission will make recommendations for legislation that would establish guidelines for future land exchange.

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

March 7, 1976

Honorable Kay Poland
Chairman
Senate Resources Committee
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

Enclosed is the report containing the determinations of the Joint Federal-State Land Use Planning Commission on the Cook Inlet land settlement. Time did not allow for mass reproduction of the report for distribution to each member of the Legislature.

Two copies of the background materials are also enclosed for use by members of the Legislature.

We appreciate the information furnished by the Joint Resources Committee for the Commission's use in considering the matter.

Sincerely,

Burt Silcock

Burton W. Silcock
Federal Co-Chairman

BWS:go

Enclosures (2)

1. A Report To The Senate And House Of Representatives Resources Committees Of The Alaska State Legislature On The Proposed Cook Inlet Land Trade.

2. Backup materials.

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

A REPORT TO THE SENATE AND HOUSE OF REPRESENTATIVES RESOURCES COMMITTEES OF THE ALASKA STATE LEGISLATURE ON THE PROPOSED COOK INLET LAND TRADE

This report is a summary of the primary considerations underlying the recommendation of the Commission on the proposed Cook Inlet Land Trade. It is submitted in response to a request for Commission review and recommendation made on February 11, 1976 by the Resources Committees of the Alaska State House of Representatives and Senate and by the President of the Senate, Senator Chancy Croft, on February 17, 1976.

The Commission's recommendation is:

> That appropriate legislation be passed authorizing the Cook Inlet Settlement under the terms and conditions of P.L. 94-204.

CONTENTS

ITEM	PAGE
SYNOPSIS OF PROPOSED LAND TRADE	1
Map - Current Land Status	2
Map - Proposed Cook Inlet Land Exchange	3
Table - Proposed Cook Inlet Land Exchange	4
THE COMMISSION'S ROLE	6
Commission Involvement in Cook Inlet Selection Problems	6
Commission's Review	7
PRIMARY CONSIDERATIONS	
Overall Considerations	8
Legal Considerations	9
Land Use Considerations	10
Economic Considerations	11
RECOMMENDATIONS	13
Cook Inlet Land Trade	13
Future Land Trades	13
APPENDICES	
Appendix A - Commission Involvement in Cook Inlet Land Selection	
Appendix B - Alternatives to Land Settlement	
Appendix C - Legal Issues	
Appendix D - Land Use and Planning Implications Related to Proposed and Existing Federal and State Reserves	
Appendix E - Cook Inlet Land Trade: Some Economic Considerations	

SYNOPSIS OF PROPOSED LAND TRADE

Section 12 of Public Law 94-204, passed by Congress on January 2, 1976, together with an agreement entered into December 10, 1975, by representatives of the Department of the Interior, Cook Inlet Region, Inc., and the State of Alaska, which is incorporated by reference in the Act, sets out the terms and conditions of the Cook Inlet Land Trade. The major elements of this complex trade are:

.....Agreement by Cook Inlet Region to shift more than half of its statutory entitlement under ANCSA away from the Cook Inlet area and, with the consent of other regions and villages, into adjacent regions.

.....Conveyance by the Federal government of approximately 50 townships of land to the State of Alaska above the entitlement provided in the Alaska Statehood Act, as well as key tracts such as Campbell Airstrip, Campbell Point, Point Woronzof, and Goose Lake in the Anchorage bowl in exchange for approximately 20.5 townships of State land to be conveyed to the United States for the benefit of the Cook Inlet Region and certain of its village corporations. This results in an increase of total State land selections of approximately 30 townships.

.....Conveyance by the Federal government of approximately 10,000 acres in fee and 220,000 acres of subsurface rights outside of known producing oil fields in the Kenai National Moose Range and certain other lands to Cook Inlet Region, Inc., in addition to the lands received from the State. The lands received by Cook Inlet are in complete satisfaction of its entitlement under Section 12(c) and Section 14(h)(8) of ANCSA.

A map illustrating the current land status of the region and one delineating the lands proposed for exchange with an accompanying chart of the size of the tracts are on the following pages. Full details of the settlement may be found in the agreement which is reproduced in House Report 94-729, dated December 15, 1975.

State ratification of the endorsement requires legislative concurrence no later than sixty days after the convening of the second session of the Ninth Alaska State Legislature, or by March 12, 1976.

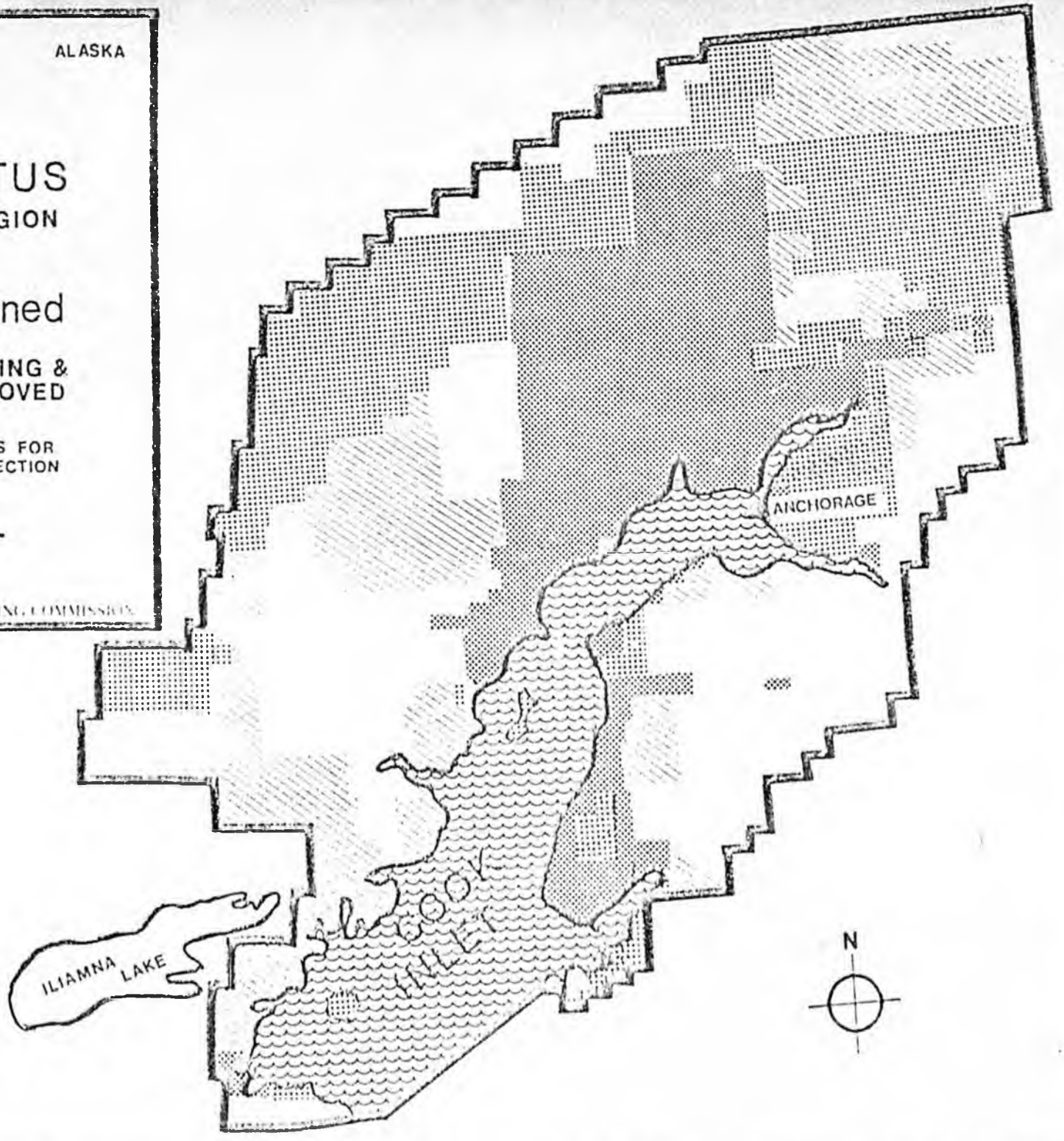
MARCH 1976 ALASKA

CURRENT LAND STATUS

COOK INLET REGION

- State Owned
- State PENDING & APPROVED
- Native AREAS FOR SELECTION
- FEDERAL

FEDERAL - STATE LAND USE PLANNING COMMISSION



MARCH 1976 ALASKA

PROPOSED COOK INLET LAND EXCHANGE SETTLEMENT

Native*

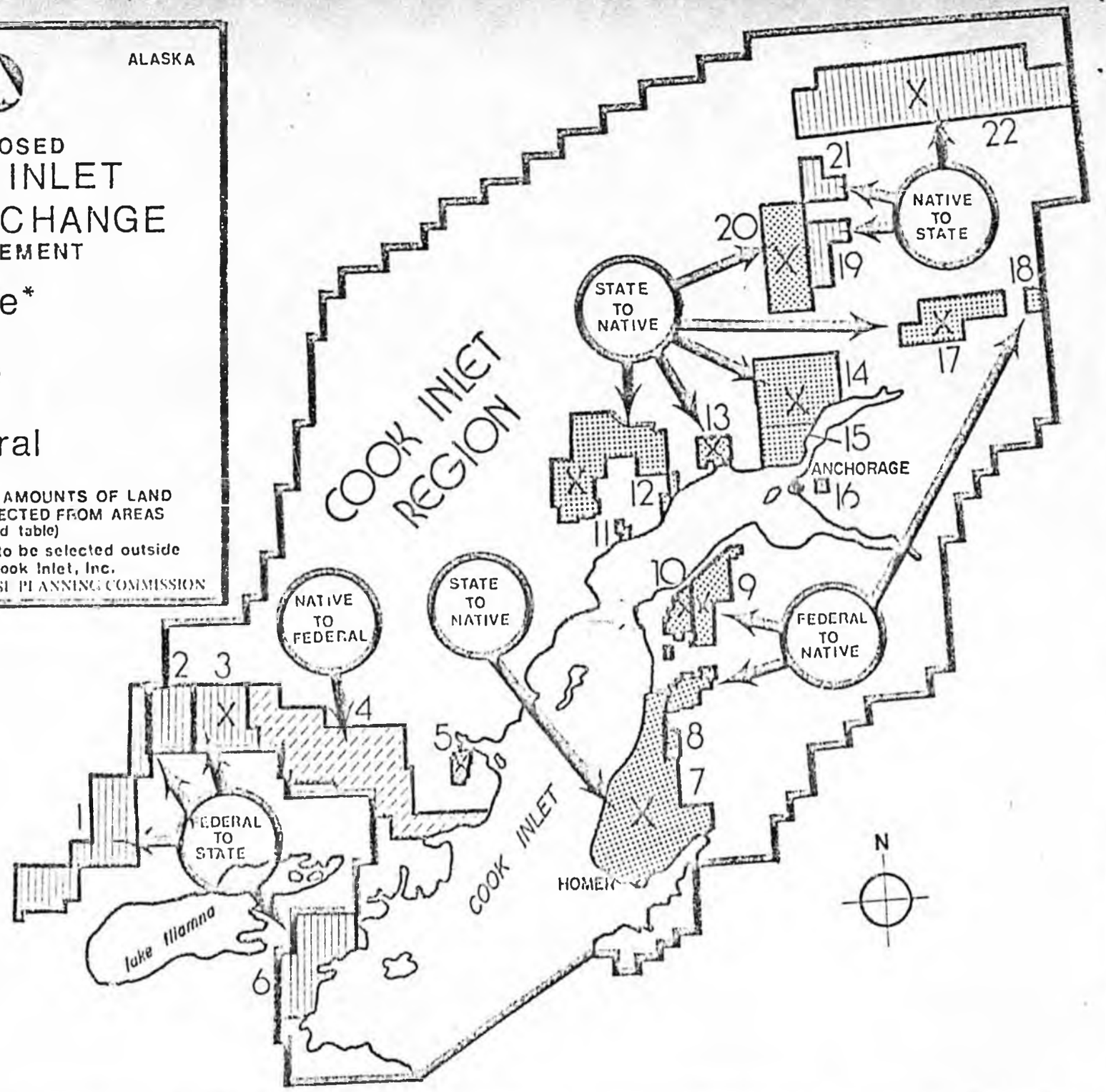
State

Federal

X X SMALLER AMOUNTS OF LAND TO BE SELECTED FROM AREAS (see attached table)

* 29.66 Townships to be selected outside region by Cook Inlet, Inc.

FEDERAL - STATE LAND USE PLANNING COMMISSION



PROPOSED COOK INLET LAND EXCHANGE

Map No.	Area Name	Approx. Area Size in Twnshps.	Approx. Number of Townships to be Selected, and Notes
1	Nushagak-Chulitna	19	23-27 - depends on village lands relinquished in Lake Clark. Additional from d-2.
2	Tutna Lake	7	7*
3	Koksetna	7	See No. 22
4	Lake Clark	28	All village selections to U.S.
5	Tuxedni	2	.5 - plus road and port easement.
6	Kamishak Bay	13	13*
7	Kenai	25	5 - scattered sites from State land, subject to State guidance.
8	Tustumena	.5	.5
9	Moose Range	4)	3.6 to 9.6 - varies with other selections. Subsurface oil, gas, and coal only. Excludes existing production.
10	Moose Range	6)	
11	Nikolai)	16	13.5 - excludes Beluga and Nikolai gas fields.
12	Beluga)		
13	Alexander	2	Depends on area relinquished in Lake Clark. Probably less than .25
14	Knik-Willow	12	.19 - see note, area 7.
15	Point Mackenzie	4	.14 - see note, area 7.
16	Campbell Tract	.2	.2
17	Chickaloon	7	.2 - see note, area 7.
18	Matanuska Glacier	1	All U.S. interest.
19	Sheep Creek	4	4*
20	Kashwitna	10	1.7
21	Talkeetna River	3	3*
22	Susitna-Chunilna	36	1* (Chunilna) 12.4 - option here and area 3.

Area Name	Approx. Area Size in Twnshps.	Approx. Number of Townships to be Selected, and Notes
These not shown on map:		
Anchorage area	.1	Miscellaneous tracts if surplused.
Healy	1	1
Intra-Regional exchange pool	6	0-6 - from surplus or revoked U.S. reserves and unperfected land entries. Available for exchange only on acre/equivalent basis for extra regional selection.
Extra Regional	N.A.	Up to 29.6 - subject in part to exchange, appropriate village regional, U.S., and State agreement, and State ¾-strike provisions.

* These total 28 townships - only 26 to be selected.

THE COMMISSION'S ROLE

The Joint Federal-State Land Use Planning Commission for Alaska was created by Act of Congress in the Alaska Native Claims Settlement Act and by Act of the Legislature of the State of Alaska (A.S. 41.40.010). The primary goals of the Commission as established by law are to: (1) insure that the economic growth of Alaska is orderly and compatible with environmental values and the economic and social well-being of the State's residents; and (2) plan for the wisest and best use of Alaska's lands. The Commission is expressly directed to: (1) seek ways to avoid conflicts among the State, the Federal government, and Alaska Natives over the selection, use, and management of lands; (2) improve coordination between the State and Federal governments; and (3) recommend changes in laws, policies, and programs affecting land use and management in Alaska. The Commission has ten members, half of whom serve as Federal appointees and half appointed by the State of Alaska.[1/] Providing executive leadership are the Governor of Alaska or his designee as State Co-Chairman and a Federal Co-Chairman appointed by the President of the United States. The Governor is required by law to name an Alaska Native to, at least, one of the State seats on the Commission. A small staff, including planners, resource specialists, lawyers, and economists, supports the Commission in its deliberations.

The Commission as a body upon which State, Federal, and Alaska Native interests are represented and whose mandated intent is to promote cooperation and resolve conflicts among these major landowners, occupies a unique position from which to provide oversight on land trades and adjustments.

Commission Involvment in Cook Inlet Selection Problems

Section 17(a)(7)(B) of the Alaska Native Claims Settlement Act directs the Commission to make recommendations concerning proposed land selections by Native village and regional corporations. Pursuant to this and other authority provided in Section 17(a) of the Act the Commission has been involved since 1972 in seeking a satisfactory solution to the land selection problems which have confronted Cook Inlet Region, Inc., and its constituent villages.

In general and specific recommendations the Commission recognized the necessity of providing lands of "similar in character" to Cook Inlet Region, Inc. to fulfill their entitlement under the Claims Act. Constraints imposed by the Claims Act prohibit selections of State lands, selections within the Kenai Moose Range, selections out of the Cook Inlet Region, or selections within a two-mile buffer zone of first class municipalities. In recognition of these constraints and problems they posed for fulfillment of the Native entitlement, the Commission recommended on March 29, 1974 that acreage in the Lake Clark area be withdrawn for Cook Inlet Region, Inc. When it appeared that Congressional amendments to the

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1/ Two vacancies, one State seat and one Federal seat, currently exist on the Commission.

Claims Act would remove most of these prohibitions and that negotiations between the Department of the Interior and Cook Inlet Region, Inc. also included the participation of State government, the Commission on October 30, 1975 communicated its unanimous support of the approach taken by the negotiators. The Commission set out the premises of its support of the concept and cautioned that technical problems required solution and that the views of neighboring regions and the full participation of Cook Inlet villages be obtained. (Copies of the letters communicating the actions cited above, as well as a detailed summary of Commission involvement in the Cook Inlet land selection problems, are included as Appendix A.)

Public Law 94-204 was enacted by Congress January 2, 1976 incorporating the agreement reached through the negotiations entitled "Terms and Conditions for Land Consolidation and Management in Cook Inlet Area." In its deliberations on the agreement, the House and Senate Resources Committees met in joint session on February 11, 1976, and passed a motion to request Commission review and report to the Legislature on the agreement.

The Commission's Review

In response to the Legislature's request, all staff were committed to an intensive compilation and analysis of land and resource data and legal issues. A special session of the Commission was scheduled for March 5 and 6. Data was solicited from all parties to the exchange, other Federal and State agencies, and the public. Transcripts of legislative and administrative hearings and minutes of legislative committee meetings on the proposed settlement were reviewed, together with testimony both supporting and opposing the settlement[2/] in order to assure that all major issues and questions would be addressed in the Commission deliberations. Data previously compiled in the Commission's Statewide Resources Inventory and research conducted in prior instances when the selection problems of the Cook Inlet Region have been considered by the Commission were reviewed. Staff presentations reflected multidisciplinary expertise and individual evaluations of alternatives to the proposed settlement.

Commissioners had the opportunity to review staff memoranda and information submitted from other sources prior to the meeting and to consult directly with the staff a day in advance of the meeting. Problems with the settlement were cited by staff, as well as benefits accruing to the settlement parties. At the meeting, comprehensive presentations were made by the lead negotiators of the Federal and State governments and the Cook Inlet Region, Incorporated. Commissioners posed questions on all major aspects of the proposed settlement to the negotiators. Each geographical area subject to the proposed exchange was examined.

2/ Written statements and documentation from Harold Galliett, David S. Jackman, and Bristol Bay Native Corporation. Copies of these statements and documents are included in the notebooks transmitted to the two Resources Committees.

PRIMARY CONSIDERATIONS

In evaluating the proposed land trade, the Commission considered how the wide variety of interests of different citizen groups affected by this trade had been accommodated. The Commission and the State have a responsibility to protect the interests of the 6,000 citizens of Cook Inlet as they strive to receive their rights from the Federal government under the Alaska Native Claims Settlement Act. At the same time, the interests of the citizens of the State as a whole, of which the Cook Inlet people are a part, must not be sacrificed. The effect of the trade on the State's overall economic well-being must be assessed and the rights of other Native regional corporations must be considered. The Anchorage area, which has been the center of the State's rapid population growth, has a need for close-in recreation space which must be considered, and plans for Anchorage's north/south runway and for a new State capital site must not be jeopardized by the trade. In addition to these and other factors which concern both the Commission and the State, the Commission has a responsibility to consider the national interest in Federal lands and in nationally and internationally important resources such as the Bristol Bay fishery.

Among the many different interests affected by the proposed trade, the Commission identified the following as primary considerations:

Overall Considerations

1. The decision on this proposal is not simply whether or not to approve this trade but, rather, whether this is the best of a range of congressional and judicial alternatives.[1/] One element is certain--Cook Inlet's entitlement under the Settlement Act to approximately 54 townships of land must be satisfied in some manner.

2. The negotiated approach embodied in this proposal represents a far better means of harmonizing conflicting interests than the other alternative means by which the Federal government might meet its obligations to Cook Inlet. Without a three-party negotiation, the transfer would be between the Federal government and Cook Inlet, and the State would have little or no input. Through the terms and conditions built into this negotiated proposal, checks and balances have been provided to insure that the interests of all parties are protected.

3. The cooperation of Federal, State, and Native interests to come to a mutually acceptable trade sets a healthy precedent for future land planning in Alaska. In the future, joint planning by the three major landowners within the State is essential if the massive redistribution of land tenure caused by the Statehood Act and the Alaska Native Claims Settlement Act is to be arranged into a satisfactory management pattern.

1/ Detailed in Appendix B.

4. This agreement involved a great deal of give and take by the parties involved. For example, Cook Inlet agreeded to take over half of its entitlement outside its own region in areas that are generally remote from the Cook Inlet people, and to accept Federal and State controls over land selection and use that would not be required under the regular provisions of the Settlement Act.

5. The proposal provides protection for the interests of Native corporations in other regions by giving both village and regional corporations veto powers over selections adjacent to and up to 12 miles from lands withdrawn for selection by Native corporations within the region.

6. State selections in the early years of Alaska statehood were concentrated in the area that was to become the Cook Inlet Region. By 1971, when the Settlement Act passed, the lowlands of the region were virtually all in State and private ownership except for Federal withdrawals such as the Moose Range and the military reservations. Given this situation, without the proposed settlement, and without State assistance and the State selected lands, there is little leeway within the Cook Inlet Region to satisfy Cook Inlet's entitlement to lands "of a charcter similar" to village sites.

Legal Considerations

1. The probability of protracted law suits is less under this proposal than under other alternative ways by which the Federal obligation to Cook Inlet could be fulfilled.

2. Most of the legal impediments to the proposed trade were removed by Public Law 94-204.[2/] The only remaining legal necessity to enable the trade is for the State Legislature to approve the conveyance of subsurface by the State government and to waive requirements for determination of equal value on a purely monetary basis.

3. The conflict between Anchorage's proposed north/south runway extension and park and recreation uses is recognized by all parties involved. This problem may be solved by the Federal process of surplusing Federal withdrawals which would eliminate land identified as needed for airport purposes from the parcel before conveyance to the State for park and recreation purposes.

4. All vested third party interests are protected by the terms and conditions of the proposed agreement. Lands made available for Native selections were in areas where there were already many private land holdings which will be protected.

2/ Detailed in Appendix C.

5. Approval of the proposed trade would assure the continuance of the 1972 settlement between the State and the Department of the Interior.[3/] Without this trade, the Cook Inlet Region will continue its litigation which challenges the 1972 settlement. A decision in favor of Cook Inlet would jeopardize approximately two-thirds of the State's existing land selections.

Land Use Considerations

1. Under the terms of the agreement, the State obtained powers to guide and control the selection process and to keep lands with particular values for recreation and other public purposes in public ownership. Similar planning powers would be unavailable to the State under the unnegotiated alternatives to this proposal.

2. The trade is designed to protect the large regions in Southcentral Alaska which have high values for public purposes.[4/] Ownership boundaries around such areas, for example, Lake Clark, Iliamna Lake, and the proposed Talkeetna State Park, have been drawn to establish workable management units.

3. Where possible, land ownership units have been consolidated and simplified. For example, blocks of State owned land are expanded in the Susitna Valley and west of Iliamna Lake, and village holdings on the west side of Cook Inlet have been consolidated.

4. This trade provides substantial protection for the Kenai National Moose Range, which has high public value as a prime recreation area for the State's rapidly growing population. Other proposed alternatives could have conveyed large areas of Moose Range surface ownership or producing oil fields to Cook Inlet.

5. Native villages will receive lands closer to village sites than under existing selection withdrawals which were far removed from villages. Such lands generally have more use and value for village purposes.

6. The proposed trade will enable Cook Inlet to acquire lands that are suitable for private land use purposes. Lands which have currently been made available for Cook Inlet selection are primarily mountainous areas which would have little or no value for a private corporation.

7. The trade retains proposed capital site areas in State ownership.

8. The trade will accelerate and assure the transfer to the State of prime areas for recreation and public purposes in the urban area of the Anchorage bowl. Of special concern to the Municipality of Anchorage is the Campbell tract. The agreement specifies that this

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3/ Copy of 1972 agreement included in notebook submitted to the Resources Committees.

4/ Detailed in Appendix D.

tract will be managed in accordance with a generalized land use plan already proposed for the area. If and when other Federal tracts, i.e., Point Woronzof, Point Campbell, and Goose Lake, are declared surplus for Federal use, they, also, will be conveyed to the State.

Economic Considerations

1. Because of the nature and complexity of the trade, and the very real difficulties in applying ordinary valuation methods, broad economic standards must be used in judging the trade. These standards must include the Commission's mandate to make recommendations relating to orderly economic growth compatible with other social, cultural, and environmental values. The standards must also include an assessment of the impact of the trade on the future fiscal and economic well-being of Alaska.

2. The economic losses that the State will purportedly incur as a result of the trade appear to be exaggerated. When highly speculative gross asset values are converted to "net present value" of probable foregone revenues, the State's expected losses are minimal.5/

3. The future fiscal viability of the State is largely unaffected by the trade. This is so for a variety of reasons, including the following:

   a. Economic development is at least as likely to occur if resources are in private ownership as would be the case if the State retained ownership of the resources. Thus, State revenues from corporate income taxes, personal income taxes, and most other tax sources will be at least as great under private resource ownership as public. Economic rents that might possibly be foregone (in the form of royalties) can for the most part be recouped through the State's power of taxation.6/

   b. It is probable that revenues foregone under the proposed trade will constitute only a minute fraction of total State revenues in the future. Anticipated revenues in the 1990's, amounting to several billion dollars annually, dwarf potential foregone revenues. For example, expected coal royalties from a proposed development in the Beluga fields are only about 1.5 million dollars per year, which amounts to about 0.03 percent of projected total State revenues in 1990.

4. The general level of economic activity will be largely independent of resource ownership. In fact, if Cook Inlet Region is assumed to be at least as development oriented as the State, then total economic activity can be expected to increase.

5/ Detailed in Appendix E.

6/ Detailed in Appendix E.

5. Economic benefits to Cook Inlet will, in part, be redistributed to other regional corporations in the State under the provision in the Settlement Act which requires that 70 percent of the revenues from resource development by any one Native regional corporation be shared with all the regional corporations.

6. The proposed trade protects the State's Swanson River petroleum revenues by excluding all producing oil fields within the Moose Range from conveyance to Cook Inlet.

APPX. A

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

March 3, 1976

MEMORANDUM

TO: Commissioners

FROM: Esther C. Wunnicke

SUBJECT: Commission Involvement in Cook Inlet Land Selection

Section 17(a)(7)(B) of the Settlement Act directs the Commission to make recommendations concerning proposed land selections by Native village and regional corporations. Pursuant to this and other authority provided in Section 17(a) the Commission has been involved since 1972 in seeking a satisfactory solution to the land selection problems which have confronted Cook Inlet Region, Inc., and its constituent villages.

.....August 16, 1972. The Commission urged the Secretary to accord the deficiency land needs of Native organizations priority in every instance over 17(d)(1) and 17(d)(2) withdrawals.

.....March 6, 1973. In addressing Chugach Native deficiency problems the Commission adopted the following general principles:

a. land withdrawals made under Section 11(a)(3) for possible regional selection should include any lands remaining after village selections from the same areas.

b. the "similar in character" standard should apply to both regional and village deficiency withdrawals made pursuant to Section 11(a)(3).

.....March 7, 1973. Formula 3 adopted for calculating gross acreage of village and regional deficiency.

.....August 2, 1973. National interest d-2 use recommendations.

.....August 6, 1973. Commission stated that none of its recommendations concerning the use of d-2 lands should be construed so

as to preclude necessary deficiency classifications. Finally the Commission requested that the Secretary exercise his administrative authority by designating needed deficiency lands prior to transmittal to Congress of recommendations regarding d-2 withdrawals.

.....September, 1973. Staff presented resource summary to Cook Inlet on lands available for possible selection.

.....January 10, 1974. Commission provided Secretary with an interim staff report on Kenai Moose Range. Second study completed and transmitted April 16, 1974.

.....March 29, 1974. Recommendations that acreage in Lake Clark area be withdrawn for Cook Inlet deficiency - based on land status problems and legal constraints in ANSCA, e.g.

no out-of-region selections
no administrative authority to open Moose Range lands to regional selections
no availability of State lands for regional selection
2-mile buffer zone

.....June 6, 1974. Small withdrawal review.

.....August, 1974. At the request of Cook Inlet Region, Inc., the Commission prepared an analysis of lands which could be withdrawn by the Secretary pursuant to Section 11(a)(3) to satisfy the deficiency entitlement of that region.

.....April 29, 1975. Staff memorandum was prepared by Counsel setting out pending Federal legislation. The memo regarding Cook Inlet land exchange set out these considerations:

-appeal of adverse District Court ruling vs. CIRI
-commencement of discussions with State
-Moose Range and Lake Clark townships for selection
-selection of small scattered tracts - Campbell and Woronzof
-lands in Eklutna withdrawals
-suspension of land selection rules requiring odd-odd and even-even regional selections

.....May 2, 1975. Commission meeting. Motion that the Commission express an encouragement to discussions presently underway between the State, CIRI and other entities that may result in better overall solutions in terms of overall management in the Cook Inlet Region, and that the Commission resources in terms of technical assistance be made available to these discussions. Also that additional time be provided to Cook Inlet; passed by general consensus.

.....October 24, 1975. Commission meeting. Michael C.T. Smith, Director of the State Division of Lands, briefed the Commission on the present s ation with respect to Cook Inlet Region, Inc. Motion by Silcock, second by Holdsworth, to endorse the land trade concept in its present status and to communicate the Commission's endorsement to the House and Senate Interior and Insular Affairs Committees: motion passed unanimously.

Elements of that briefing a : as set out in 10-2/3-75 "Opening Statement" prepared by Department of Natural Resources.

.....October 30, 1975. Recommendations were made to the House and Senate Committees on Interior and Insular Affairs stating that the Commission had considered the tentative agreement arrived at between Cook Inlet and the State of Alaska, and was in unanimous support of the approach taken in the proposed agreement. The premises for Commission approval of the concept of the agreement are set out as: the insufficiency of lands to meet deficiency requirements; disagreement with the District Court's ruling; improved land management units through the consolidation of ownership; and lessened impact of private land ownership in the Kenai National Moose Range. In supporting the agreement the Commission did not minimize the technical problems which needed to be overcome prior to final adoption, and the Commission urged that the views of neighboring regions be obtained and that the full participation of Cook Inlet village corporations be assured.

.....February 6, 1976. At a regular Commission meeting, after a brief explanation of P.L. 94-204 and the corresponding "Terms and Conditions for Land Consolidation and Management in Cook Inlet Area" the Commission, by unanimous vote, authorized the State Co-Chairman to support state law reform concerning land trades on behalf of the Commission. Co-Chairman Jackman advised that he would be testifying before House and Senate Natural Resources Committees of the Alaska Legislature.

.....February 11, 1976. Co-Chairman Jackman was asked by the House and Senate Natural Resources Committees to convey to the full Commission their request for Commission review and submission of a report of its findings on the proposed Cook Inlet land trade.

.....February 17, 1976. Confirmation of the legislative request was sent to the Commission by the President of the Senate together with a request that the Co mission expedite its report as much as possible to enable the Alaska Legislature to act within the times established in the agreement.

.....February 23, 1976. Formal request of the Senate Resources Committee for Commission assistance was transmitted by Committee Chairperson, Kay Poland. Concern of the Committee about relative values of lands given and received, impact on future land selections by the State, and long term effects of the amendment of Section 6(i) of the Alaska Statehood Act was expressed.

.....March 5, 6, 1976. A Commission meeting to consider the Cook Inlet land trade and to make recommendations to the Joint Senate and House Resources Committees was scheduled.

October 30, 1975

Honorable Henry M. Jackson
Chairman
Senate Committee on Interior
and Insular Affairs
Attn: Steve Quarles
3106 Dirksen Building
Washington, D.C. 20510

Dear Chairman Jackson:

It is our understanding that the Interior Committee will soon commence its markup of certain proposed amendments to the Alaska Native Claims Settlement Act. With this in mind, I am writing to communicate the Commission's strong support for amendatory legislation relating to the land entitlement of Cook Inlet Region, Inc., and its constituent villages, as such legislation is described in the recently announced agreement between Cook Inlet and the State of Alaska.

For the past three years, the Commission has been actively involved in efforts to resolve the land-related problems which have confronted Cook Inlet and its constituent villages. These efforts have taken the form of technical assistance to the regional corporation and, more recently, to the State of Alaska, and recommendations to the Secretary of the Interior with respect to the location and quantity of withdrawals needed to help satisfy the requirements provided in Section 11(a)(3) of the Settlement Act. Most recently, the full Commission has considered the tentative agreement arrived at between Cook Inlet and the State of Alaska. On the basis of this consideration, which took place at a Commission meeting held on October 24-25, 1975, I have been authorized to communicate our unanimous support for the approach taken in the proposed agreement.

The Commission's position is premised on the following principal considerations. First, in our opinion, a significant portion of the acreage presently withdrawn for possible selection by Cook Inlet does not meet the qualitative criterion provided in Section 11(a)(3) of the

Settlement Act. In arriving at this conclusion, we are cognizant of the Federal District Court's ruling in Cook Inlet v Morton, and are constrained to disagree with that portion of the ruling which relates to compliance with the criteria specified in Section 11. Second, the land status pattern in the Cook Inlet region, which encompasses large Federal withdrawals and significant acreage in State and private ownership, indicates that it would be very difficult for Cook Inlet to obtain a satisfactory land entitlement in the absence of the land exchanges and other mechanisms provided in the pending agreement. Third, implementation of the agreement would greatly improve land management within the Cook Inlet region by consolidating Federal, State, and Native ownership in areas which aptly reflect the interests of the various parties. Thus, for example, the agreement would result in Native ownership of certain areas on the Kenai Peninsula which, by virtue of their location, soils, and other characteristics, appear suitable for private settlement and development. Similarly, the State would obtain additional lands in the Bristol Bay watershed, which is of critical importance to the State for its fishery and recreational values, and the Federal government would be assured of a viable management unit in the Lake Clark area, which has been proposed for national park status pursuant to Section 17(d)(2) of the Settlement Act. Improved management and ownership patterns would also result in other areas of the Cook Inlet region, including the Talkeetna Mountains and the Kenai Peninsula. Fourth, the proposed agreement would lessen the impact of private ownership on the Kenai National Moose Range by reducing the total acreage that might otherwise be transfered to Native corporations and by requiring that certain protective measures be taken in a significant portion of the lands that would be conveyed. In short, implementation of the agreement would permit the creation of rational patterns of land management and ownership which reflect the varied interests of the parties involved. Neither the administrative nor judicial alternatives afford the flexibility which is necessary to accomplish this result.

In supporting the proposed agreement, the Commission does not mean to minimize the technical and other problems which must be overcome prior to its final adoption. For example, there are certain legal issues which must be addressed. However, the research conducted by our staff and more extensive work performed by attorneys for Cook Inlet and the State indicate that solutions to these problems do exist. Moreover, since the agreement would authorize Cook Inlet to select lands within the boundaries of certain other regional corporations, the views of those corporations must be considered with great care, and an effort must be made to insure that in the process of improving land ownership and management patterns in the Cook Inlet region, we do not jeopardize

the opportunity to create sensible patterns in other areas of the State. In addition, full participation on the part of Cook Inlet's constituent villages and groups will be required, for the agreement calls for the relocation of certain withdrawals made for their benefit. We believe that the participation and cooperation of all of the parties to the agreement and other affected Native corporations will create an atmosphere in which possible problems can be resolved and the objectives of the current proposal can be successfully achieved.

Thank you for your consideration of this correspondence.

Sincerely,

Burton W. Silcock
Federal Co-Chairman

cc: Senator Ted Stevens
Senator Mike Gravel
Royston C. Hughes, Assistant Secretary, Program Development and Budget
Ken Brown, Legislative Counsel, Department of the Interior
Guy Martin, Commissioner, State Department of Natural Resources
Michael C.T. Smith, Director, State Division of Lands
Sam Kito, President, Alaska Federation of Natives
Roy Hundorf, President, Cook Inlet Region, Inc.

JWK:go

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March 29, 1974

Honorable Rogers C.B. Morton
Secretary of the Interior
Department of the Interior
18th and 19th Streets N.W.
Washington, D.C. 20240

Dear Secretary Morton:

This letter is written as a followup to our correspondence of March 12, 1974, relative to the land entitlement of Cook Inlet Region, Inc. under relevant provisions of the Alaska Native Claims Settlement Act. The purpose of this letter is to provide an analysis of the quantitative and qualitative aspects of the present situation and to suggest a possible solution.

The analysis which follows is predicated on the following assumptions:

1. In accordance with the position of the Department of the Interior and the State of Alaska, and for the purpose of this analysis, lands within the Cook Inlet Region which were selected by the State in the first half of 1972 will not be considered as available for withdrawal under Section 11(a)(3) of the Settlement Act.

2. For the purpose of this discussion, it will be assumed that the Secretary of the Interior is prohibited as a matter of law from releasing lands now located in the Kenai National Moose Range if the sole reason for doing so is to satisfy a Native deficiency entitlement. This assumption is predicated on inferences from the perceived Congressional intent in enacting limitations on village selection within units of the National Forest and Wildlife Refuge Systems. It does not apply, of course, to those village selections within the Range which are specifically authorized by the Act.

3. Pursuant to final decisions of the Bureau of Indian Affairs respecting village eligibility, the villages of Tanaina, Carvell, Chickaloon, Alexander Creek, Point Possession, Knik, Salamatof,

and Kaltag, as well as those villages which have already passed through the qualification process, will be considered as eligible to receive land under the Act. Accordingly, the land status and selection rights of these villages will be considered in the computations set out below.

4. The "similar in character" requirement specified in Section 11(a)(3) applies to both village and regional withdrawals made pursuant to this subsection. With respect to the former category of withdrawals, the reference point for determining which lands satisfy this standard is the "core" or primary township or townships upon which the village having the deficiency is located. With respect to the latter category, the relevant yardstick is a composite of the core townships of villages located within the region. Accordingly, lands located within the proposed withdrawal should possess physical and topographical characteristics which are similar to those contained within the appropriate core township or townships.

5. Section 11(a)(3) lands which are not selected by the appropriate village corporation will be made available for possible regional selection. This remainder, when added to other available lands, will enable the region and its constituent villages each to select from lands totaling three times their estimated deficiencies. Accordingly, the quantitative criterion specified in Section 11(a)(3) will be satisfied in each instance.

In the past, the Commission has made certain general recommendations to you with respect to the disposition of lands under Section 11(a)(3). Since these recommendations apply equally to the analysis set out below, we will list them here for your ready reference:

1. In all instances, the selection requirements of Native corporations under relevant provisions of the Settlement Act should be given preference over withdrawals made pursuant to Section 17(d)(1) and (2). As stated previously, we believe that this approach is consistent with the underlying philosophy of the Act.

2. Section 11(a)(3) lands which are not selected by the appropriate village corporations should be made available for possible regional selection. This remainder, when supplemented by other available lands, will enable the regional corporation and its constituent villages each to make their selections from lands totaling three times their estimated deficiencies. Accordingly, the quantitative criterion specified in Section 11(a)(3) will be satisfied.

3. The "similar in character" criterion specified in Section 11(a)(3) should be applied to both village and regional withdrawals made pursuant to this subsection. With respect to the former category of withdrawals, the reference point for determining whether this standard has been met should be the "core" or primary township or townships upon which the village having the deficiency is located. With respect to the latter category, the relevant yardstick should be a composite of the core townships of villages located within the region. Accordingly, lands located within the relevant core township or townships and within the proposed Section 11(a)(3) withdrawal should possess similar physical and topographical characteristics.

Specific Analysis

On the basis of the foregoing assumptions and recommendations, and having reviewed relevant land status information for lands within the Cook Inlet Region, we respectfully suggest the following findings and recommendations. Our findings are as follows:

1. The Native census for the constituent villages of the Cook Inlet Region indicates a population of 1,286. (The total Native population of the Region is approximately 8,300.) Broken down by individual villages, this figure translates into a total village land selection entitlement of 1,013,760 acres pursuant to the formula provided in Section 14(a) of the Settlement Act.

2. Pursuant to the formula provided in Section 12(b) of the Act, the 12 villages located within Cook Inlet are entitled to select an additional 219,990 acres. For the purposes of this analysis, this total is allocated on a population basis among the villages involved.

3. The total village entitlement under Sections 14(a) and (b) is 1,233,750 acres.

4. Approximate total acreages in the following categories of land have been withdrawn pursuant to Sections 11(a)(1) and (2): 252,200 acres of public domain, 373,200 acres located within an existing wildlife refuge, 20,000 acres within an existing national forest, 210,350 + acres of State selected and tentatively approved land, and 43,650 acres comprising other categories. Taking cognizance of the quantitative limitations on selections from within existing wildlife refuge and national forest areas and on the selection of State lands which have not yet been patented, as provided in Section 12(c)(1) of the Act, the total acreage included within the categories just referred to translates to an available village selection right of 771,333 acres.

5. The land selection deficiency of villages located within the Cook Inlet Region is 462,426 acres, which is derived by subtracting the total acreage available for possible selection within withdrawals made pursuant to Sections 11(a)(1) and (3) (771,333 acres) from the total village entitlement under Sections 12(a) and (b) (1,233,759 acres). Introducing the 3X multiplier specified in Section 11(a)(3), a withdrawal of 1,387,278 acres is required.

6. The deficiency lands referred to in the preceding finding must be allocated to the villages of Tyonek, Eklutna, Alexander Creek, Knik, Salamatof, Nanilchik, and Seldovia, each of which has an unsatisfied deficiency that occurs as a consequence of existing land status and the selection limitations specified in the Act.

7. The Department of the Interior has previously withdrawn approximately 2,058,500 acres to satisfy the outstanding deficiencies of Eklutna, Tyonek, Nanilchik, Seldovia, and Salamatof. Of this amount, approximately 525,000 acres definitely do not, and approximately 530,000 acres may not, meet the qualitative criterion specified in Section 11(a)(3). (This determination is based on an examination of U.S.G.S. topographic maps which depict land contours and elevations with an acceptable degree of accuracy.)

8. In accordance with the formula provided in Section 12(a) of the Settlement Act, the selection entitlement of Cook Inlet Region, Inc. is 1,971,360 acres. In addition, because of the statutory prohibition against regional subsurface selections within existing wildlife refuges, the region is entitled to select 200,640 acres of subsurface estate.

9. As a consequence of the land status around existing villages and the selection limitations provided in the Settlement Act, the regional corporation can select only a few acres from lands currently withdrawn for village selection pursuant to Section 11(a)(1). Accordingly, the region has an unsatisfied deficiency of 1,279,000 acres. Introducing the 3X multiplier specified in Section 11(a)(3), this figure translates into a withdrawal requirement of 3,837,000 acres.

10. Pursuant to Section 11(a)(3), the Department of the Interior has previously withdrawn approximately 3,700,000 acres to satisfy the outstanding deficiency of Cook Inlet Region, Inc. and pursuant to Section 17(d)(2)(B) has identified an additional 805,000 acres of dual withdrawals for ultimate disposition by Congress. Of the lands previously withdrawn, 1,552,000 acres, as computed in relationship to the USGS maps referred to previously, definitely do not, and 1,989,000 acres may not, satisfy the qualitative criterion specified in Section 11(a)(3).

11. One half of the deficiency lands designated in findings 7 and 10 to being questionable from a qualitative point of view satisfy the "similar in character" criterion and one half do not. (This "best guess" appears reasonable on the basis of the data now available.)

Recommendations

1. The Secretary of the Interior should withdraw at least an additional 250,000 acres meeting the qualitative and distance criteria specified in Section 11(a)(3) in order to satisfy the deficiency entitlements of the villages referred to in finding 6 above. In recognition of the land selection prohibitions and restrictions which apply to the Kenai National Moose Range, to State selected and tentatively approved lands, and to certain other categories of land located within the Cook Inlet Region, it is recommended that these withdrawals be made principally from acreage within the Lake Clark area which is now withdrawn pursuant to Section 17(d)(2) of the Settlement Act. As specified in Section 17(d)(2)(C), such withdrawals should be given preference over the d(2) classification which now exists.

2. A minimum of 1,500,000 additional acres meeting the qualitative and distance criteria specified in Section 11(a)(3) should be withdrawn for possible selection by Cook Inlet Region, Inc. Because of the prohibitions and restrictions on regional selection referred to above, these withdrawals should be made principally from lands located within the Lake Clark area. In accordance with previous Commission communications to the Department, it is recommended that all deficiency withdrawals made for the benefit of Cook Inlet Region, Inc. be given precedence over withdrawals previously made under Section 17(d)(2) of the Act.

3. After the withdrawals specified in recommendations 1 and 2 above have been made, those lands presently included within Section 11(a)(3) withdrawals which do not meet the criteria specified in this subsection should be returned to a different status.

We recognize that the recommendations made herein, if implemented, could have an adverse impact on certain legislative proposals submitted by the Department pursuant to Section 17(d)(2) of the Settlement Act. We believe, however, that the findings and recommendations which we have made are required either by the express terms of the Act itself or by reasonable inferences therefrom. In other words, the operation of the statute dictates the result, and in view of the existing land status situation within the Cook Inlet Region, there is little room for administrative discretion.

With this in mind, we are hopeful that the present selection problems confronting Cook Inlet and the constituent villages will be quickly resolved on an administrative level. If this does not occur, the Department and Cook Inlet Region, Inc. will remain locked in litigation which has already proved to be an expensive and rather unsatisfactory problem solving mechanism for both parties.

Thank you for your consideration of this matter. We look forward to discussing it further with you during our upcoming trip to Washington, D.C., at which time we will supplement the analysis provided herein.

Sincerely,

Barton W. Silcock
Federal Co-Chairman

Sincerely,

Joe P. Josephson
State Co-Chairman Designee

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Appx. B

Alternatives to Land Settlement	Possible outcomes, remedies and restrictions	Effect on: State	Federal	Native
1. Rejection of current offer.	1. Cook Inlet goes back to Court and loses:			
	a) Secretary does nothing to alter current land status.	Retains currently held lands & resources but could potentially lose control of very limited unselected lands near Anchorage.	Retains currently held lands & resources. Lake Clark management unit proposed as park-lands reduced in size or lands must be purchased from village corporations to maintain proposal dimension under current agreement.	Retains currently held lands & resources Because of the nature of current holdings potential more intensive development would be required to establish same return as is possible with better lands obtained through the trade.
	b) Secretary offers alternative lands to Cook Inlet.	Retains currently held lands & resources. Could potentially lose control of some lands near Anchorage & could be forced to set aside some additional State lands for recreation & habitat if Moose Range land losses severely restrict recreational opportunities. Potential time delay if attempt is made to transfer Moose Range lands. Loss of oil & gas revenue.	Because of limited lands available of "like kind" within region may be forced to attempt to transfer lands within Moose Range. Serious legal questions over Secretary's ability to transfer Moose Range lands for these purposes. Other Federal lands within region of much lower quality even in Lake Clark d-2 areas or any of the remaining d-1 areas.	Possible gain of additional better quality lands. However without going out of region, lands available to Secretary are very limited & will probably include additional Moose Range lands which could delay settlement & could result in Cook Inlet gaining nothing.

Alternatives to Land Settlement	Possible outcomes, remedies and restrictions	Effect on: State	Federal	Native
	c) Congressional action which does not neutralize the "1972 memorandum of agreement."	State would retain lands currently patented "T.A.'d" or in patent pending status. Could potentially lose control of small amount of unselected lands near Anchorage. State could be forced to set aside some additional lands for recreation and habitat if Moose Range losses are incurred & if same general level of recreational opportunities are to be maintained. Could lose oil revenue from Swanson River field.	Because of limited lands of like kind available it is likely that Congress would be forced to transfer lands from the Moose Range & from the Lake Clark d-2 areas. Federal government might lose oil revenues.	Cook Inlet would gain much better quality lands, however, it might be difficult to give full entitlement in lands of "like kind." Natives would probably receive oil royalties & other minerals in the Moose Range.
	d) Congressional action which in effect neutralizes the "1972 memorandum of agreement."	The ramifications of this type of action to the State are enormous. Those State lands which were put into a selection pending status could (unless stipulated by Congress) all be subject to reclassification throughout the entire State. The Secretary could be forced to reclassify substantial amounts of this land into d-2 status or Native deficiency forcing the	The breakdown of the "1972 agreement" will leave the Secretary open to suits which could force him to reclassify much of the land currently under State selection into d-2 status. The whole process of determining "national interest" lands could be reopened resulting in a high cost both in terms of time & money.	Cook Inlet would gain substantially particularl if out-of-region selections are allowed. They could possibly pick up lands within the Moose Range as well as being able to select out-of-region lands which are currently unde State control.

Alternatives to Land Settlement	Possible outcomes, remedies and restrictions	Effect on: State	Federal	Native
		State to reselect & redevelop its selection patterns. This could also make it more difficult for the State to select its full entitlement by the 1984 deadline. The State could lose some of the best "settlement lands" available to them.		
2. State makes a settlement which involves State & CIRI only. (This exchange would probably do little to affect Cook Inlet's economic status, merely transfer to them lands of "like kind & character.")	1. Primary constraint is meeting equal value criterion.	Even considering the problems of determining "equal value" (see Tuck memo). The State would be hard pressed to exchange land with Cook Inlet on an acre for acre basis which would probably end in the State receiving more land of average lower value than that currently held. Legal questions resolved within State courts.	This arrangement would not affect the Federal government land status.	Cook Inlet would probably receive considerably less acreage than their current entitlement. A few more development options might be open to them, however, their near-term economic position is likely to remain unchanged.
3. Settlement between Federal State, and Cook Inlet. (Modifications of current agreement.)	1. Possible area changes. a) Force Cook Inlet to select within their own region.	Lands might not be sufficient to avoid potential State selections completely. Could have the effect of speeding completion of the settlement however, thereby	Federal government might be forced to give up additional acres in Moose Range or possibly some d-2 lands to compensate Cook Inlet for selection of "like	Cook Inlet would improve their position over a no-agreement position although depending on the choices available for out-of-region selections they could

Alternatives to Land Settlement	Possible outcomes, remedies and restrictions	Effect on: State	Federal	Native
		allowing the State to complete its selection in other regions.	kind" lands within the region.	possibly be worse off than under the current agreement. The time taken to complete the settlement might be shortened from current agreement.
	b) Do not allow Cook Inlet to select land within the Moose Range.	Because of the high values present on the Moose Range lands pressure will be on State to make additional State lands available to compensate for the high value lands the Natives would lose.	The same problem exists here as with the State. The high values on the Moose Range could force the Federal government to increase the amount of land available to Cook Inlet to compensate for the loss of Moose Range lands. If values received by Cook Inlet & the Natives are not an issue, there is probably sufficient land within the region to fulfill the strict ANCSA requirements for Cook Inlet.	Cook Inlet, unless compensated by a selection of large blocks of land would probably lose value under this situation, at least as far as known. Total value could be held at the same level if the region were allowed more land outside of the region, however, it would be difficult to swap on this basis completely within the region.
	c) Exclude Beluga area from Native selection.	This alternative would protect currently selected coal reserves in the Beluga area. The total value of the loss to the State is likely to be small since the State would retain sufficient taxing authority to tax most of the "economic	This alternative could bring additional pressures on the Secretary to release other equal value lands for Cook Inlet. Since the lands are limited, this could mean either more land, higher value land as in the Moose Range, or	Cook Inlet could lose one of its prospects for near term income. This could accelerate the rate at which they develop other lands. They are also likely to push for additional income-generating lands in other areas.

Alternatives to Land Settlement	Possible outcomes, remedies and restrictions	Effect on: State	Federal	Native
		rents" that would be associated with the field.	possibly more land outside of the region.	
	d) Allow CIRI to select more land outside of the region.	State will lose additional lands and control of lands outside of region could also be forced to select lower quality lands in other regions.	This should not affect current d-2 lands, however, additional lands would have to be made available for CIRI selection. Total lands held in other regions would decline.	Cook Inlet could gain some additional "high quality" lands outside of region which could improve their economic viability.

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

March 4, 1976

MEMORANDUM

TO: Commissioners

FROM: Esther C. Wunnicke, Attorney Advisor

SUBJECT: Legal Issues in Cook Inlet Land Trade

At the time the Commission made detailed recommendations to the Secretary of the Interior of lands to be made available for deficiency selections by Cook Inlet Region, Inc., in March, 1974, the following legal constraints applied:

- out-of-region selections were prohibited by Section 12(c)(3) of the Alaska Native Claims Settlement Act;

- selections in the Kenai Moose Range were prohibited by apparent Congressional intent in the Settlement Act to respect then-existing boundaries of Federal withdrawals and prohibit Regional selections within them. Qualified villages located within the range are entitled to village selections within the range;

- the agreement between the State of Alaska dnd the United States of September 1, 1972, confirmed selection by the State of Alaska of lands in the Cook Inlet Region making them unavailable for Regional selection;

- Section 6(i) of the Alaska Statehood Act prohibited conveyance by the State of subsurface title on pain of forfeiture to the United States;

- no selections were allowed Native corporations within a two-mile buffer zone of first class municipalities as provided in Section 22(1) of the Settlement Act.

The above constraints were addressed in the Congressional enabling legislation, P.L. 94-204, January 2, 1976, and the remaining legal barrier to the completion of the proposed agreement is premised on provisions of State law.

A.S. 38.05.125 mandates the reservation of mineral rights to the State in any deed of State land, except for land originally acquired by purchase, exchange, condemnation, gift, excheat, or foreclosure. Most lands in the exchange were obtained by the State as selections under the Alaska Statehood Act. Division Order No. 121 which further defines Alaska policy in this regard also states:

> The State shall retain all mineral rights. The other party to the exchange may transfer or retain the mineral rights. In no event shall the mineral estate be contemplated in equating the value of the respective parcels.

A.S. 38.95.060 provides for exchange with Native corporations created under the Alaska Native Claims Settlement Act. Subpart (b) of that Section provides that exchange "shall be on the basis of equal value and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged."

This proposed settlement may be distinguished from exchanges contemplated under the Alaska Native Claims Settlement Act. Exchanges of this magnitude and, particularly, exchanges before title had been obtained by Native corporations had not been considered previously. Although it is arguable that "equal value" in the economic sense need not be required in this exchange and that since the conveyance by the State is to the United States to whom it would forfeit the lands anyway if a reservation of mineral estate were not made, it would be well for the State Legislature expressly to waive the application of A.S. 38.05.125 and A.S. 38.95.060 in any legislation approving the participation of the State of Alaska in the proposed exchange.

The Commission has had the benefit of the opinion submitted to the Senate Resources Committee by Mr. Berrier, Director of Legal Services of the Legislative Affairs Agency, and reiterates the following portion of that opinion:

> Any specific legislation should (1) contain recitals relating to the Cook Inlet Land Trade and what the legislature intends to accomplish by approval of the land trade; (2) a specific waiver of the provision of AS 38.05.125 since this is clearly the major impediment existing currently; (3) a specific waiver of the equal value exchange requirement contained in AS 38.95.060. While arguably this equal value requirement would not apply in any event, the values on both sides of the transaction are of such nature that appraisals would be complex and subject to substantial dispute....

Other legal issues which have been raised apparently need only clarification or further agreement of the parties. These encompass such things as:

Restrictions on Point Woronzof, Point Campbell, and Goose Lake titles for recreational purposes. These tracts will not be available until surplused by the Federal government and it appears that any conflict, particularly that of the use of portions of the Point Woronzof tract, for airport purposes, may be solved by excision of particular sites before surplusing and conveyancing. A letter from Deputy Assistant Secretary for Fish and Wildlife and Parks of the Department of the Interior, chief negotiator for the Federal government, addressed to Alaska Attorney General Avrum Gross speaks to this issue.

Mental Health lands included in earlier tentative agreement among the parties for conveyance by the State of Alaska have been removed from the agreement. These were Mental Health lands in the Beluga area. The trust status of any Mental Health lands which may be included in pool areas in the exchange dictates that the State either use its blocking power to prevent selection of these trust lands or that the State assure that a fair exchange is made for other lands of equal value for Mental Health funds.

The status of Port Alsworth as a group under the Alaska Native Claims Settlement Act and its entitlement to land which will become part of a d-2 proposal for National Park purposes remains to be resolved. Legal staff has prepared a memorandum on this issue.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB 27 1975

Honorable Avrum M. Gross
Attorney General
State of Alaska
Department of Law
Pouch K
Juneau, Alaska 99811

Dear Mr. Gross:

This is in response to your inquiry of February 23, 1976. Specifically, you inquire whether lands described in subsection IC(2)(e) of Terms and Conditions for Land Consolidation and Management in Cook Inlet Area (H.R. 94-729, 94th Congress, 1st Session, December 15, 1975; hereinafter Terms and Conditions), may be transferred to the State of Alaska by the Federal Aviation Administration for airport purposes. It is our understanding that FAA has the authority to make such a transfer by virtue of the Airport and Airway Development Act of 1970, 49 U.S.C. §§1701-1741 (1970).

Subsection IC(2)(e) of Terms and Conditions provides that Cook Inlet Region, Inc., may not include certain lands, including Point Woronzof, in the selection pool created by this document. The subsection further provides that:

> [S]uch lands shall be reserved by the United States for early conveyance to the State for park and recreation purposes as an integral part of the consideration for this document.

The issue is whether this provision precludes transfer of part of the Point Woronzof tract to the State of Alaska by the FAA for other than park and recreation purposes, if the transfer were otherwise authorized by law.

The Terms and Conditions must be read in conjunction with section 12 of P. L. 94-204, January 2, 1976. This section directs the Secretary, after certain conditions are met, to make a number of conveyances to Cook Inlet Region, Inc., and to the State of Alaska. The mandatory conveyances to the State of Alaska are described in paragraph (d) of section 12, and this paragraph refers to the Terms and Conditions to clarify the identities and amounts of lands to be conveyed to the state. Section 12 does not specifically direct the Secretary to convey Point Woronzof to the state for park and recreation purposes. Paragraph (b) of section 12 states that the duties and obligations of the United States and Cook Inlet Region, Inc., under the Terms and Conditions, are ratified as a matter of federal law.

We should note that it certainly was not the intention of the Departmental or State negotiators that the subject provision be construed as exclusive. And we are not aware of any reason why legislation authorizing a transfer of land to the state for park and recreation purposes should be construed as prohibiting a transfer of those lands to the state for airport purposes, if that transfer were also authorized by law. Apparently, the State of Alaska desires to receive part of Point Woronzof for airport purposes, rather than for park and recreation purposes. We see no impediment to such an action, if the proposed FAA action is authorized by law.

Sincerely,

Curtis Bohlen

E. U. Curtis Bohlen
Deputy Assistant Secretary for
Fish and Wildlife and Parks

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

March 4, 1976

MEMORANDUM

TO: Commissioners

FROM: Richard J. Stenmark, Natural Systems Analyst

SUBJECT: Cook Inlet Region Land Settlement
Land Use and Planning Implications related to
Existing and Proposed Federal and State Reserves

Lake Clark Management Units:

The proposed land settlement helps to define boundaries of the Lake Clark management unit and provides opportunities to enhance the unit for conservation, preservation, and public recreation purposes by providing for:

1. Greater Federal retention of lands in public ownership along the middle section of Lake Clark, at Kontrashibuna Lake and its scenic valley, and in the connecting lands between the Kontrashibuna drainage and Chinitna Bay on the Cook Inlet coast.

2. Relinquishment of certain Native land selections along the middle section of Lake Clark, and around Kontrashibuna Lake so more of these important recreation lands remain in public ownership.

3. Sets the stage for possible future Federal acquisition or consolidation of village selected lands between Chinitna Bay north to Harriet Point subject to village consent. Acquisition might be by purchase or exchange.

The settlement also helps to clarify Federal and State interests and concerns in the general area:

1. Nationally significant resources are recognized in the area by the Secretary, CIRI, and the State.

2. Management of this area should be flexible and recognize the scenic, recreational, and inspirational resources that should be preserved, as well as State and local interests, including subsistence and sport hunting.

If the aforementioned public/private land adjustments were not made now as part of the Cook Inlet land settlement, it seems likely that the adjustments would be sought by the Federal government through exchange of lands involving lands elsewhere in the State, or possibly by purchase. Basis for this probable action is that many people believe these lands have important public values and are an integral part of the Lake Clark management unit whether it ultimately becomes a park, preserve, or whatever.

Past actions or recommendations by the Federal-State Land Use Planning Commission or others regarding all or portions of the area include:

1. Recognition by Interior agencies and the Forest Service of national interest values.

2. F-SLUPC land use recommendations that addressed the recreational, fishery, subsistence, mineral, and other values of the area in August, 1973.

3. Lake Clark National Park proposal by the Federal government in December, 1973.

4. A preliminary proposal in November, 1975, by the State of Alaska for Alaska Resource Lands unit.

5. A tentative proposal by the Federal-State Land Use Planning Commission for a national preserve unit within the National Park System.

The proposals in items 3, 4, and 5 did not include the area proposed to be added to the Lake Clark unit by the Cook Inlet Settlement, partly because of the lack of settlement of the Cook Inlet Region Natives' entitlement.

Iliamna Lake Management Unit:

Several factors may be relevant to this management unit and how it relates to the Cook Inlet Region land settlement. An Iliamna National Resource Range was proposed by the Federal government which includes lands in the vicinity of Iliamna Lake and in the Nushagak River drainage, and was to be a unit of the National Wildlife Refuge System. The area is also of considerable State interest.

Though a variety of values are present within the area, the dominant values are generally considered to be the fisheries and fishery habitats. Sport trophy fishing opportunities are recognized as exceptional. Spawning habitats, especially in streams entering Iliamna Lake, are perhaps the most important element related to the Bristol Bay commercial salmon fisheries.

Significance of the Bristol Bay commercial fisheries is assigned to local, State, national, and international levels.

During bargaining of the land settlement, the State has apparently sought to strengthen its presence in the general area but has ended up primarily with lands in the Nushagak drainage with lesser fishery and recreation values. A position has apparently been taken by Interior to retain as much of the most important lands and waters of the proposed range in a management unit in Federal ownership for fishery and other values. Several reasons could exist for this. One may be related to United States involvement in North Pacific international fishery treaties and any commitment conceived from those treaties regarding protection of habitat used by fish involved. Another reason probably considers the quality and significance of this resource area and since it is the heart of a proposal before Congress, the Department should not usurp the right of Congress to consider the area and provide for its disposition.

Proposed resource range lands that are involved in the proposed land settlement appear to be less critical lands and waters. They tend to round out or complement previous State selections and interests in the general area.

Past discussion by the F-SLUPC and others has recognized the changing land ownership pattern in the Iliamna Lake vicinity and suggested that perhaps there is merit in the lands adjoining Iliamna Lake going into State ownership and administration. This is a possible future for these lands but one not assured.

There are two additional aspects regarding this area. The Bureau of Land Management has had a long-time interest in these lands and did classify the area for Federal retention prior to the ANCSA. Management of the proposed resource range was to involve both BLM and the Fish and Wildlife Service. However, recent action in Congress regarding wildlife ranges, indicated an overwhelming concern that units of the National Wildlife Refuge System be administered directly by the Fish and Wildlife Service.

How these various factors will affect Federal and State interests in the area and ultimate disposition of the lands is only conjectural at this time.

Kenai National Moose Range

The moose range has been the subject of previous studies by the F-SLUPC related to the Cook Inlet Region, Inc., land settlement, and Kenai Borough requests for land. In general, the range has been viewed as an extremely important public reserve because of its varied recreational opportunities, wilderness values, wildlife, and habitat values, and for certain subsurface mineral resources. Its recreational attributes are particularly important because of the relative proximity to large population areas of the State. Federal-State Land Use Planning Commission's opinion regarding the range was essentially to minimize any intrusion into the range in terms of land transfers that would significantly affect key values.

The question raised in the case of this proposed land settlement is, does the intrusion into the moose range to help satisfy CIRI's entitlement seriously affect the values and purpose of the range? This can be viewed by looking at the regional interests only or in conjunction with the village selections that will also remove certain lands along the western edge.

From previous analysis information, it appears the combined intrusion will not significantly and adversely affect the long-term viability of the range in most respects. Village selections are subject to the laws and regulations governing use and development of the moose range.

Surface estate lost to the Regional Corporation at the west end of Tustumena Lake can be developed in a manner complementary to values of the lake. Sufficient restrictions in this regard appear to exist.

Extraction of subsurface minerals at some future time will be in areas of village selection, where development has occurred, or is expected to occur and there are restrictions on the manner of extraction. A problem that might occur in this regard would be subsidence of the land following removal of coal in the form of gas if and when coal extraction is authorized.

Critical habitats need not be lost. Only one (Elephant Lake--the smallest) of the areas identified as suitable for wilderness is involved, and the popular canoe trails are not affected except for a possibility along the Swanson River which need not occur through proper planning and appropriate easements.

It does appear, however, that any further intrusion into the moose range, than that provided by the agreement, could very well affect the quality or quantity of certain values, such as the number of moose that could be supported on the range.

Proposed Talkeetna Mountains State Park:

Through the proposed land settlement, the State would receive certain lands along the western edge of the Talkeetna Mountains which lie within a State park proposal now before the Legislature. Without the proposed settlement, these lands would likely be selected at least in part by Cook Inlet Natives. Acquisition by the State of these lands through purchase or exchange would be necessary to overcome land ownership and administrative problems.

A park or recreation area in this general section of the Talkeetna Mountains has been pursued the past few years. Hatcher Pass and the old Independence Mine area were focal points for this area. However, agricultural and mining interests in certain lands as well as other factors have caused a change in the current bill to help minimize some of the overlapping interests. Principal drainage in the current park proposal is the Kashwitna. Few lowlands would be in the park unless the lower Kashwitna River area is included. While the westernmost lowlands are State patented lands, the next range of lowland and valley entrance to the east is presently in regional deficiency classification for Native selection. These are the lands that would become available to the State through the settlement.

The value of these lands is that they would complete State ownership of all the lands within the proposed park.

These lowland areas are particularly important in this context in that this is the likely zone where access, camping, and other facilities might be developed for the general public visiting this section of the park. The Independence Mine area which is an interest area has certain use limitations. Other than the above values, the tract does not appear to possess any particular attributes differing from lands to the north or south. However, this aspect must be viewed in the context of the whole park proposal.

Proposed Far North Bicentennial Park:

Three areas within the Anchorage Bowl are very important to the State as well as the Anchorage municipality for recreation and other purposes. Point Woronzof, the Campbell Tract, and Point Campbell are prime recreational lands that will be utilized more and more in the coming years. The State Division of Parks views the Campbell Tract not only as an excellent urban recreation area immediately accessible to a growing community but also as an entrance to nearby Chugach State Park. This would create a complete unit, with recreational lands close to the people and park and wilderness somewhat further away. Lands adjoining Point Campbell and the Point Woronzof area are already used for recreational purposes.

These three areas are well located in that each one is in a different part of Anchorage.

The Campbell Tract has had considerable support as a municipal park to be named the Far North Bicentennial Park.

APPX. E

Federal-State
Land Use Planning Commission
For Alaska

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

March 5, 1976

MEMORANDUM:

TO: Commission

FROM: Dr. Bradford H. Tuck, Economic Analyst

SUBJECT: Cook Inlet Land Trade: Some Economic Considerations

I. Introduction

Recent discussions surrounding the Cook Inlet land trade, including those presented in various testimony, in the newspapers, and in discussions at the Commission have raised a variety of economic issues. Many of these are related to a major concern of all parties, namely, that the lands involved including resources, are of equal value. A variety of State and Federal statutes require some treatment of the equal value issue in land trades, and Cook Inlet Region, Inc. is of course interested that it receives at least equal value. However, none of the statutes are explicit about how value is to be determined.

When the magnitude of the trade is taken into account and uncertainty surrounding lands and resources involved in the Cook Inlet trade are considered, the problems of determining equal value are extreme. Ordinary valuation procedures are simply inadequate.

The Commission must decide whether or not the trade meets standards implicit in the ANCSA; specifically that its recommendations are conducive to enhanced land use planning for Alaska and that its recommendations are designed to:

> "insure that economic growth and development is orderly, planned and compatible with State and national environmental objectives, the public interest in the public lands, parks, forests, and wildlife refuges in Alaska, and the economic and social well-being of the Native people and other residents of Alaska."

The State must also apply broad economic standards in attempting to evaluate the trade. Three major questions of economic significance should be addressed.

1. What, in real economic measures, is the State either gaining or losing in the trade?

2. What impact does the trade have on the future fiscal viability of the State?

3. What consequences does the trade have with respect to the future general economic well-being of the State?

An analysis of these issues and questions, and not a parcel by parcel evaluation, must be the basis for measuring the economic values of the trade.

II. Summary and Conclusions

A variety of issues of economic significance have been explored in relation to the proposed land trade. The conclusions can be summarized as follows.

1. Because of the complexities of the trade and the very real difficulties in applying ordinary valuation methods, broad economic standards must be used in judging the trade. These standards must include the Commissison's mandate to make recommendations relating to orderly economic growth compatible with other social, cultural, and environmental values. The standards must also include an assessment of the impact of the trade or the future fiscal and economic viability of Alaska.

2. The economic losses that the State will purportedly incur as a result of the trade are generally found to be highly exaggerated. When highly speculative gross asset values are converted to "net present value" of possible foregone revenues, the State's probable losses are minimal. In short, little, if anything of economic consequence, is lost.

3. The future fiscal viability of the State is largely unaffected by the trade. This is so for a variety of reasons, including the fact that the State power of taxation can effectively recoup possible economic rents given up in the trade. Also, the probable foregone revenues would constitute only a minute fraction of total State revenues.

4. The net effect of the trade on total economic activity is quite limited, and in any case, the bias would be toward increased activity. This is based on the assumption that CIRI is at least as economically development oriented as the State.

III. The Problem of "Equal Value"

Value can be determined (at least theoretically) in a variety of ways, but for present discussion purposes, there are two methods that are of particular interest. The first of these relates to determining value on the basis of market comparisons or other transactions of a similar nature, and the second approach attempts to find a present value of some kind of expected future income from the lands and resources involved. The concepts are not mutually exclusive, but can be treated separately.

The market comparison approach is one frequently used in appraisals. The basic idea is to find other transactions of "like kind and character" which reflect what the present market is willing to pay for a particular parcel. When one attempts to apply this method to an evaluation of the Cook Inlet trade, many serious flaws emerge. The first is, quite simply, that the magnitude of the land parcels involved in almost all cases dwarfs anything that typically trades in the private sector. In other words, there are no comparable trades. Hence, we must look at much smaller parcels and then estimate what the effect of a significant increase in the quantity of land would have on the market clearing price, and this involves, in turn, some estimate of the rate of disposal of the lands and resources.

A second major problem in the present situation is that in most instances both surface and subsurface property rights are involved. While the surface resources are known to some degree, knowledge of the subsurface is much more limited. Thus, a high level of uncertainty surrounds any attempt at evaluating the subsurface resources. Even if subsurface resources were known, major problems in valuing these resources would exist. Specifically, we would have to know the net income stream that could be derived from the resource. At best, such estimates are highly speculative.

A much more fundamental problem with market comparison valuation lies in the theoretical underpinnings of this method. In essence, valuation by market comparison rests on the assumptions of pure competition; a large number of buyers and sellers, none of which is sufficiently large to effect the market price, and freedom of entry and exit from the market by all interested parties. If these conditions are not met, then the result is bargaining between parties holding some degree of monopoly control over the market and, as a consequence, over the resulting price. A price, or value, determined under these conditions does not necessarily reflect the "socially desirable" market clearing price that is the basis for market comparison valuation.

In the present trade we are faced with a situation in which the sheer magnitude of the lands involved (even with full knowledge of the quality of the lands and resources) means that no valid market comparisons exist. Both in terms of the size of the trade and the limited number of parties involved, the setting is one that closely parallels an oligopolistic bargaining situation. It is highly unlikely that the three-party valuation of the trade would be anything like that which would emerge on the basis of competitive market forces.

With these reservations in mind, it is interesting to look at some rough attempts at valuation of the trade. A somewhat cursory attempt at placing market comparison values on the State lands involved in the trade was carried out by the State Division of Lands. Using their data, and supplementary guesses where necessary, Table 1 was constructed. The assumptions underlying the table are set out in the notes to the table, but in general, only surface values are considered. In one instance (the Beluga area) discounted coal royalties are included, and in one other instance (Campbell tract) sand and gravel values are included in one case.

It is clear from inspection of the information in the table that the net value of the trade is highly sensitive to certain assumptions. Using value per acre figures that would find some support in at least some quarters in all instances, the State either gains, loses, or emerges in a neutral position, depending upon which set of assumptions one wishes to use. A recent suit filed in which it is claimed that the State is losing 285.7 million dollars in the trade (surface estate only) is a further indication that the problem of determining value (in the appraisal sense) is great.

A second approach to the valuation of lands or resources is based on the capitalization of expected net income flows resulting from the lands and resources involved. The problems associated with this approach also present serious obstacles to accurate valuation of the present trade. In general, two key variables, the "net income stream" and the "discount" rate are involved.

From the State's perspective, the net income flows from the lands and resources involved may take the form of sales revenue, leases, bonus payments, rentals, royalties, severance taxes, property taxes, etc. In some cases there may also be personal and corporate income taxes that might otherwise not occur. From these revenues must be subtracted the administrative costs of managing and disposing of the lands and resources involved to obtain the net income stream. Thus, the revenues to the State depend on a complex set of policy considerations relating to the disposition of State lands and resources as well as the timing of this disposition, and on a whole

TABLE 1

Sensitivity of "Equal Valuation" Considerations to Per Acre Valuations,
Cook Inlet Land Trade, State Lands

Area		[1]Valuation, State		Modified Valuation[4] "Unfavorable"		Modified Valuation[5] "Favorable"	
Lands to State	Acres (000)	$/Acre	Total (mil$)	$/Acre	Total (mil$)	$/Acre	Total (mil$)
Nushagak)	599.04	40	24.0	30	17.97	120	71.88
Chulitna)							
Sheep Creek	23.04	40	0.9	30	0.69	120	2.76
Sheep Creek	69.12	40	2.8	30	2.07	120	8.29
Campbell Tract	4.00	1501	5.9	1000	4.00	1000	16.00
Pt. Woronzof	0.59	5598	6.6	1000	0.59	1000	0.59
Pt. Campbell	1.18	7083	4.2	1000	1.18	1000	1.18
Tutna Lake	161.28	40	6.5	30	4.84	120	19.35
Chunilna	23.04	40	0.9	30	0.69	120	2.76
Talkeetna River	69.12	40	2.8	30	2.07	120	8.29
Koksetna	285.70	40	11.4	30	8.57	120	34.28
Susitna							
Kamishak Bay	299.52	40	12.0	30	8.99	120	35.94
TOTAL	1535.63		$78.0		$51.66		$201.32
Lands From State							
Pt. Mackenzie	3.20	200	0.640	667	2.13	667	2.13
Knik-Willow	4.48	300	1.344	1000	4.48	1000	4.48
Kashwitna	38.40	250	9.600	500	19.20	500	19.20
Chickaloon	4.80	125	0.600	300	1.44	300	1.44
Kenai	115.20	150	17.280	450	51.84	450	51.84
Beluga, Nikolai[2]	311.04	70	38.872	100	48.20	100	48.20
Misc. Lands to Villages[3]	41.47	225	9.331	300	12.44	300	12.44
TOTAL	518.59		$77.667		$139.73		$139.73
NET TOTAL (To-From)			+0.333		-88.07		+61.59

Source: See Notes.

Notes:

1. Valuation based on information contained in a memorandum from Michael C.T. Smith to Guy Martin, dated December 6, 1975, and in supporting materials for memorandum.

2. Includes 15.9 million for coal royalties and revenues foregone, and 1.2 million dollars of foregone timber values. Both numbers are present value figures.

3. Informed guess.

4. Assumes; "$40" land is actually worth $30 per acre; that restriction on use of Campbell Tract, Point Woronzof, and Point Campbell (for recreation, etc.) reduce value to $1,000 per acre; and that lands relinquished by the State are revalued upwards as indicated. While there is no particular basis for assuming these figures, they are not out of keeping with general observations on land prices in the respective areas, and the probable impact that relocation of the capital might have.

5. Assumes that the values for lands relinquished by the State remain as in note 4, but that the value of lands received by the State is $120 per acre instead of $30, and that sand and gravel sales from development of Campbell Tract (at 12 million dollars) are included. Gravel sales are restricted to the development of Campbell Tract for recreation purposes only. Data based on Division of Lands information.

set of future economic conditions which in general have neither been predicted nor in any sense are knowable at present. Some truly Herculean assumptions would be necessary to even begin to estimate either the magnitude or the timing of the net income stream that the State is either giving up or obtaining in the trade.

A further problem exists in the case of public resources in attempting to estimate net income. It is one of attempting to assign dollar values to nonmonetary flows of services such as those derived from recreational use of the lands. For example, the Campbell tract if restricted to park and recreation uses might be expected, at the outside, to yield an annual income of perhaps $100,000 net. If we capitalize this income stream, in perpetuity, at 5 percent then the tract is theoretically worth 2 million dollars, or about $500 per acre. I suspect that many people would place a substantially higher valuation on the tract precisely because the land is restricted to park and recreation purposes. Or, for example, how does one place a dollar value on the preservation of fisheries habitat? In other words, there are real problems with setting dollar values on many of the benefits associated with public lands.

The problems that Cook Inlet Region, Inc. and the Federal government face are similar, although in the case of Cook Inlet, the subjective valuations (aside from uncertainty due to imperfect knowledge) are of a different nature given the private identity of the corporation.

To compare net income streams they must somehow be capitalized or discounted to obtain comparable present values. Thus, a second major consideration in this approach to valuation is the choice of discount or capitalization rates.

The present value of income received far in the future is highly sensitive to the particular discount rate selected. For example, $100 received 50 years in the future has a present value of $8.72 if the discount rate is 5 percent, while the value of $100, 50 years in the future, is only $2.13 if the discount rate is 8 percent. Alternatively, the capitalized value of a perpetual income stream of $100 is $2,000 at a 5 percent capitalization rate, but only $1,250 at an 8 percent rate. The point is simple; the value of future income or the capitalized value of a future stream of income, is highly sensitive to the discount or capitalization rate used. When this is combined with the highly speculative nature of future net income streams, either public or private, any attempt to estimate value is subject to extreme error.

The discussion of the issue of "equal value" can be summarized as follows. A serious problem arises as soon as we attempt to determine value on the lands and resources involved in the trade. The

magnitude of the tracts involved, and the uncertainties as to the kinds and qualities of the lands and resources involved, as well as the uncertainties related to future income anticipated, make standard valuation techniques inappropriate. In short, if the concept of equal value is to have real meaning in the analysis of the present trade it must be based on broader economic concepts than those set out above.

IV. What is the Economic "Loss" to the State?

There currently are many numbers being mentioned purporting to show various values that the State is losing in the trade. In a suit filed by Galliett and Lewis, asking for a permanent injunction against the trade, the net loss to Alaskan citizens is estimated to exceed 5 billion dollars in present value. Figures prepared by the Bureau of Mines, which you have, indicate that about 2.0 billion dollars of potential royalty income to the State will be foregone. Another figure points to roughly 90 million dollars of potential agriculture and forest land values that will be lost by the State. A detailed critique of these and other numbers goes beyond the scope of this memorandum, but certain points should be made.

The most important point is that generally the losses are grossly exaggerated. What the State stands to lose (and the same standard applies to what it might gain) is the present value of revenues that it would derive from the disposition of the lands and resources that it would not otherwise derive, minus the associated costs of managing and disposing of the lands and resources.

In each of the above cases, it is implicitly assumed that every acre and every resource, be it known, inferred, or hypothesized, is going to be sold, leased, extracted, or in some other way converted into revenue going to the State. Such an assumption is simply in error. Clearly only a small fraction of land that the State is giving up in the trade would have gone into private ownership or in some other way generated revenue for the State. Even with substantial population growth in the State, market demand will not exist in sufficient magnitude to absorb the vast quantities of acreages being discussed.

In a period of rising land prices past history must be interpreted with caution, but it is instructive to take note of the history of land disposition in the State. It is generally recognized that revenue was only one of several forces influencing land disposal. Much of the pressure was, in fact, counter to the revenue objective, inspired as it was by the desire to obtain "cheap" land. Presently proposed legislation to create "homestead" land is indicative of a continuing sentiment that revenue is not the only concern in the disposal of land.

A second consideration is that, for example, during the years 1972-74, land disposal revenues to the State ranged between 1.5 and 3.0 million dollars per year. This is hardly a significant source of revenue. Furthermore, disposal of lands, particularly when random settlement and development is the result, probably generates costs to the State far in excess of the revenues received.

For similar reasons, it is highly unlikely that the State would or could market every last acre of timber resource that has been identified in the trade, nor is it probable that the State could convert all of the lands with agricultural potential that have been identified into some form of revenue. In other words, the gross value of the surface estate is a far cry from future income streams that the State might derive from these lands.

It was pointed out earlier that the relevant economic value to the State is the present value of the revenues, not their nominal value some generations in the future. This clearly further reduces any hypothetical loss to the State.

Similar remarks apply to the subsurface resources. The assumption that all of the known, inferred, and hypothesized deposits or resources will be developed, even with the time frame suggested, is at best rank speculation. There is, firstly, a real question as to whether some (or perhaps any) of these resources will ever have commercial value. Secondly, it is entirely possible that, as a matter of State choice, the resources would not have been developed in any event.

It is meaningless to compare future gross royalties when no adjustment is made either for timing or for the uncertainty of the future revenues. It is a problem of adding apples and oranges. A common denominator is necessary and present value is the most frequently accepted means of making the comparison. For example, if the numbers prepared by the U.S. Bureau of Mines are discounted for both time and risk, the present value (1976) of all royalties estimated amounts to about 24 million dollars. This is a far cry from the several billion dollars that might be inferred from the tables. While the choice of risk factors and timing are arbitrary, a wide range of factors will result in present value amounting to millions, not billions of dollars.

A more concrete example of what present coal prospects look like is available. According to the Alaska Scouting Service, a huge coal complex is planned for the Beluga area. Informed sources place annual production at an average of 5 million tons per year, at a royalty of $0.30 per ton. Thus the revenue amounts to 1.5 million dollars per year. Assuming that production begins four

years from now, and lasts for thirty years, the present value of the royalty (discounted at 8 percent) is about 12 million dollars. It might also be pointed out that the project is still in the planning stage and there is no guarantee that production will ever take place.

There is another point that needs to be made with respect to State "losses." This relates to the issue of income foregone by the State on resources traded off. Since economic rents are closely tied to this discussion, we should briefly define the concept. We can define economic rent as the revenue received from the sale of a resource minus the real economic cost of producing the resource (including a competitive rate of return on investment)

The importance of this concept is that economic rent is a "surplus" above and beyond that necessary to bring a resource into production, and that the economic rent is the only source of revenue from the resource that the State may acquire. In other words, only if economic rent is present will the State be able to impose any kind of royalty or tax on the resource. If the rent is not there, and the State attempts to impose a royalty, production will not take place.

Hence, the question of what the State gives up in the transfer of the resource is really a question of how much economic rent the State stands to loose. The answer varies according to the assumption one makes.

If we assume that the State uses its full power of taxation, then 100 percent of the economic rent can be returned to the State, and the State has given up nothing in the transfer of the resource to the private sector.

While the State is unlikely to do this, it is reasonable to expect that the State will be as successful at "capturing" rents from the private sector as it is in capturing them in its own negotiations. Under these assumptions, the State again has lost little or nothing.

In other words, while the State may give up ownership of the resource, it in no way gives up the ability to derive roughly the same revenue that it would have derived otherwise. Whether it chooses to do so or not is another matter.

V. The Issue of the State's Fiscal Viability

The second major economic question that should be addressed is "does the trade impair the future fiscal viability of the State?" The answer is almost certainly no.

significant in the context of the numbers with which the State will be dealing in the near future. In any event, the assumed foregone income is substantially over stated.

In short, relatively small investments by the State over the next 20 to 30 years could easily endow an income stream in perpetuity that would exceed anything that would likely be derived from the lands and resources being given in the trade.

For these, and other reasons stated above, the future fiscal impact of the trade is negligible.

VI. Economic Consequences of the Trade

The final question of significance is the impact of the trade on the general level of economic well-being in the State. In all probability, total economic activity will be largely unaffected by the trade. If we assume that Cook Inlet Region, Inc., is as development oriented as the State, then the net effect is negligible.

There are some factors that suggest that the trade will actually lead to an increase in activity. For example, the State's requirement of primary processing on timber sold from State land means that privately owned timber of comparable quality is more readily marketable. The fact that CIRI is a "for profit" corporation may also promote development that might not have occurred if the State had retained possession of the resources.

In any event, it is unlikely that the net difference will be of any significance in the overall situation. The ISEGR projections indicate that total personal income in the State in 1990 will be in excess of 10 billion dollars, even under the limited growth assumptions. It is hard to envision the net consequences of the trade having much effect on such a total.

A BRIEF SYNOPSIS OF TESTIMONY RECEIVED ON THE PROPOSED COOK INLET LAND TRADE AS RECEIVED BY THE SENATE RESOURCES COMMITTEE

JOHN A. FARLEIGH
ADMINISTRATIVE ASSISTANT
SENATE RESOURCES COMMITTEE

* *

FOREWORD

THIS SYNOPSIS, EXCEPT WHEN QUOTED, IS A PARAPHRASE OF TESTIMONY RECEIVED. SOME OF THE TESTIMONY HAS BEEN OMITTED TO AVOID REPETITION. IF EXACT LANGUAGE IS NEEDED, PLEASE FEEL FREE TO CONTACT ME, JOHN A. FARLEIGH, AT THE SENATE RESOURCES COMMITTEE, ROOM 126, CAPITOL BUILDING. I WILL BE GLAD TO LET YOU LISTEN TO THE ORIGINAL TAPES.

MEETING #1

Briefing by Cook Inlet Region Incorporated as presented to the Senate Resources Committee January 23, 1976 by Roy Huhndorf, President of CIRI, and Monroe Price, Legal Counsel for CIRI.

The meeting started with Mr. Price explaining the black book that Governor Hammond sent down explaining the proposed Cook Inlet Land Trade. Mr. Price said that the State took the position during negotiations that no producing oil or gas well or mineral resource should be included in the trade with the exception of the Beluga-Capps coal field. He mentioned that the State Mental Health lands, containing approximately three/fourths of the known coal reserves, were excluded from the trade area. The State had other interests to protect; such as Cook Inlet's law suit,(CIRI vs. Morton) which calls for some State selections under the 1972 settlement of State of Alaska vs. Morton to be relinquished and made available for selection by CIRI. Also, the State is currently receiving approximately $7 million per year in royalties from the Swanson River oil and gas fields and fields on the Kenai National Moose Range. The State insisted on protecting this flow of revenue. Mr. Price felt that there was at least a 50% chance that CIRI would have received these fields as they were included in the Frizzel offer. (Then acting Secretary of the Interior, Frizzell had made an offer to CIRI, but it fell through at the 11th hour.) At this point, Senator Rader expressed a reluctance to transfer mineral rights under this agreement because it might establish a bad precedent for future trades. Mr. Price stated, that he felt that it would not set a precedent because the State conveys the land to the Federal Government

who in turn conveys it to CIRI and because this trade was conceived under a unique set of circumstances. In response to a question, Mr. Price said that the State's figure on the value of coal in the trade area is $15.9 million, discounted at 8% under the medium scenario. Mr. Huhndorf then stated that the only reason that CIRI would accept so much of its entitlement (up to 30 townships) out of region was that they would receive one source of revenue capable of early production (Beluga-Capps coal field). Senator Rader then asked if CIRI would accept cash or additional land for the mineral rights the State is giving up. Mr. Huhndorf replied that the settlement was worked out very carefully over a period of 8 months. He felt that any substitution would void the agreement and that the Board of Directors of CIRI was not "overjoyed" at the prospect of more negotiations. Mr. Price said that the State has the expectation that CIRI will participate financially in the development of Beluga coals. The area would be developed faster which would be in the long term best interest of the State economy. Revenues could be protected by severence tax rather than royalty. Senator Poland mentioned that under section 7(i) of ANCSA, CIRI would have to share 70% of its coal royalties with the other 11 Native Corporations, Senator Rader then advanced the theory that CIRI would do better for themselves if they took cash instead of minerals to avoid the provisions of 7(i). Mr. Huhndorf rebutted that the court might rule that the money is payment for the subsurface rights; therefore section 7(i) would apply anyway. Mr. Price added that if CIRI ends up with no subsurface rights, it would't be fair to the other corporations that must share theirs. Senator Rader said since the trade is now a proposal rather than an agreement, cash would not constitute purchase of subsurface rights because the land has not yet been patented to CIRI. When asked if there were any other mineral rich areas being traded, Mr. Price replied, there are coal reserves on the Kenai

Peninsula, but most of that land is already in private hands and wouldn't be eligible for Cook Inlet selection. Senator Poland asked if CIRI was receiving their full entitlement under this agreement and Mr. Huhndorf said yes. Mr. Price concluded that the State didn't get involved because of inequity to CIRI but because they were trying to protect State interests. Among them; lands near proposed capitol sites shouldn't be in private ownership, protection of revenues the State was already receiving, good land use planning and land management, and avoidance of instability due to federal litigation.

MEETING #2

A briefing on the Cook Inlet Land Trade by the Department of Natural Resources as presented to the Senate Resources Committee February 4, 1976 by Guy Martin, Commissioner and Michael C.T. Smith, Director, Division of Lands.

Mr. Martin opened his statement by saying that since his staff had prepared the technical testimony for presentation to the Committee in Anchorage on February 7, he would limit his testimony to a brief synopsis of the historical, legal and resource management framework of the trade. Mr. Martin went on to say: Here is the situation as of mid-spring, 1975. CIRI protested the situation they were in because of a lack of suitable lands for their selection. Most of the suitable lands were in either tentatively approved (TA) status or already patented by the State. CIRI had entered into law suit with the Interior Department (CIRI vs. Morton). CIRI entered into settlement negotiations with the Interior Department which went on virtually unknown to the State. Acting Secretary of the Interior Frizzell made an offer to CIRI which would have included among other things, the Swanson River oil & gas fields, but the offer fell through at the 11th hour. Upon failure to negotiate a settlement, CIRI went to Congress for resolution of their plight. The State started to lobby in Congress for its interests in the Cook Inlet area. There they were asked by the House and Senate Interior Committees and Alaska's delegation to intervene in the negotiations between CIRI and the Interior Department. The State also felt that CIRI had a viable law suit, and

since the CIRI was asking the court to rule some State selections made in 1972 void, the State was uncertain of any judicial outcome. Therefore, the State administration decided to intervene in the negotiations.

Mr. Martin continued his testimony, "The Cook Inlet Land Exchange will be the forerunner for other negotiations which are similar." Trades of this type are essential for proper land management. Future trades will have to be handled similarly to this one. We must establish a framework for future trades. We must "deal with issues of value in a much broader prospective" by defining and quantifying values other than tangible values. This is the first attempt at solving this type of problem. We must use this trade to help establish guidelines for future trades. In other comments, Mr. Martin said, the State is keeping the "lions share of the Beluga coal fields" and "the State must look to a severence tax to derive its revenues from these or other mineral resources."

In response to questions, Mr. Smith said the following: Three/fourths of the known coal reserves are in the State Mental Health lands and are not included in the trade. Current leases under contract, in the Beluga coal field, have a royalty set at 10¢ per ton. The leases are in effect until 1991 when they can be renegotiated. When asked what percentage of the known coal reserves the State is keeping is under lease, Mr. Smith said, all of it. The State has never had a program to collect coal data on its own land. The data comes from people who obtain prospecting permits.

To obtain a lease you must get a prospecting permit and then be able to prove that commerical quantities of coal exists in the lease area. Therefor, when a coal reserve becomes proven, someone has the right to take a lease on it. The royalty is fixed at the time the prospecting permit is issued, which currently is fixed at 30¢ per ton.

Senator Poland then asked, CIRI maintained that the amendment to the Statehood Act, waiving the equal value provision and ban against trades of mineral estates, wasn't needed for this trade. Why was this included in the Omnibus Act? Mr. Martin replied, "just as a safety factor." Jim Keeves, Assistant Attorney General, Anchorage, added, "that the principal impact of that amendment is upon the flexibility with which the Federal Government will be free to conduct itself in undertaking other transactions." Senator Croft then asked, why the Governor had changed his position and said that he would not commit the State to the trade unless the Legislature approved it. Mr. Martin replied, in our "best legal judgement", we think the Legislature should approve the trade as "an appropriate safeguard" to insure the legality of the trade.

MEETING #3

Cook Inlet Land Trade public hearing held in Anchorage Saturday, February 7, 1976 before the Joint Senate & House Resources Committees and other interested Legislators.

Michael C.T. Smith, Director, Division of Lands, was first to testify. However, due to a malfunctioning tape recorder almost all of his opening statement was lost. He introduced Ross Schaff, State Geologist and Director of the Division of Geological and Geophysical survey (DDGS), who began to summarize open file report 94 entitled, "Economic and Geological Resource Occurences in other areas of the Proposed Cook Inlet Land Trade." The report was written by Patrick L. Dobey, Don L. Mc Gee and DDGS staff. Mr. Schaff stated, the "known coal reserves in the Beluga land trade area is only 570 million short tons", while "the hypothetical reserves within the land trade area amounts to 2 billion short tons." "This does not include the 1.6 billion known short tons in the Mental Health lands, which are not included in the trade. "In the case of known coals, we are 95% sure that those coals are there." In the case of hypothetical coals, "in our professional opinion", we think, the coals are there. "Actually, this hypothetical estimate will be different depending upon the operator or the investigator." Total estimated loss in royalities to the State, "to the year 2025 would range between $84 million and $650.9 million". If those figures are discounted at 8% to present day values, we're talking between $6.5 and $67 million in income to the State lost. Discounted at 10%, between $3.7 and $42 million. This does not include lease fees. "Our report deals with the other trade areas and

here we are more or less in the realm of speculation, because of the uncertainty of the actual land that will be traded." "In terms of the total trade, the State would be trading away a total of 895 million short tons of known coal." "In terms of hypothetical coal...50 billion tons would be our estimate." Just for comparison, "the total hypothetical coals in the State reported by McGee in open file report 51, we're probably talking about 4 trillion short tons of coals." When asked, Mr. Schaff replied, "We do not have any direct evidence that oil and gas exists. We can speak of the potential." When asked what would be the earliest possible production date, Mr. Schaff replied, production would begin in the trade area in 1981 at 1 million tons per year in the most optimistic case and in 1990 at half a million tons per year in the pessimistic case. The accumulative production at the end of 50 years would be 150 million tons in the pessimistic case and 891 million tons in the optimistic case, presuming a production rate of 21 million tons per year. This is very optimistic as the largest coal producer in the U.S. produces 7.4 million tons per year. Mr. Pat Dobey, co-author of the report, added, "the assumption here is that somebody can absorb 21 million tons per year of our coal which is a tremendous amount of coal."

Cleland Conwell, a State mining engineer, was next to answer questions. Senator Poland asked him if he had been asked to give an appraisal of the trade area and if he agreed with the figures in the report submitted to the Committee. Mr. Conwell replied that he had been consulted and

that he basically agreed with those figures. He went on to say that the 10¢ per ton royalty was misleading because it only applies to "one specific lease granted in 1971 and that is only on 7,000 acres (less than 1/3 township). Furthermore, the State has the right to make adjustments in rents and royalties if an inequitable situation exists. "The State of Montana recently has raised their royalty to, I understand, 33%." When asked how soon mining could begin, Mr. Conwell replied, large scale mining - 10 million tons per year or greater - couldn't be done"in less than 6 years... a 6 to 10 year time limit for a major operation is realistic." When asked what the prime market might be, Mr. Conwell answered, for export to the Pacific Northwest and Japan.

Next to testify was Steve Hackett, exploration geophysicist for DGGS. Senator Poland asked Mr. Hackett what he had discovered through his research in the trade area. Mr. Hackett replied, "There is substantial evidence that indicates that there is quite a bit of tertiary sediment in the Beluga Basin north of the Castle Mountain fault. Senator Poland asked, "What does that mean?" Mr. Hackett replied, "the gravity and magnetics in the area indicate that there could be a substantial tertiary sediment which encloses the coal and possibly oil and gas resources within the area of discussion." When asked if he agreed with the report at hand, Mr. Hackett said, "I believe that this report refers specifically to a coal evaluation and it does mention oil and gas potential, but the survey, as such, just used known geologic evidence." "I think that there is quite a bit of evidence to indicate that there is oil and gas potential in the

Beluga Basin area that has not been previously considered." "The only way that this type of data can be expanded is by drilling."

Representative Smith then asked, if any of the trade area is under oil and gas lease at present? Detro Denton, mineral leasing officer for the Division of Lands, came forward to answer. He said, "I'm not sure. I believe that a part of it is." Don McGee, co-author of the report, then testified in support of the report, echoing comments made previously.

Dr. Ernest Wolff, employed at the University of Alaska's Mineral Research Laboratory, then read a brief statement by Earl H. Beistline, Dean of the School of Mineral Industry. In conclusion, Mr. Beistline said, "thus, in my opinion, the State should retain as much of its mineral resources as possible and make such resources available to the private sector for exploration and mining. The rest of Dr. Wolff's testimony was lost to an inaudible tape. Dr. Wolff did express similar feelings to those of Mr. Beistline and did say that his was not the official position of the University of Alaska.

Bill Waugeman, President of the Alaska Miners Association, testified in favor of the trade. Mr. Waugeman did not however, represent the views of the Alaska Miners Association.

Roy Huhndorf, President, Cook Inlet Region Inc., and his attorney, Mr. Monroe Price, were next to testify. Mr. Huhndorfs testimony covered the same material presented to the Senate Resources Committee, January 2?

Mr. Huhndorf said, "We (CIRI) did not seek an amendment to the Statehood Act, nor did we consider such an amendment necessary to carry out the terms of our agreement." Another new point by Mr. Huhndorf was, "it has already been made clear from preliminary talks with some of the lessees that CIRI will not be able to profit from the coal unless it contributes, through capitol, to the acceleration of development." Senator Poland asked if Congress "would be less sympathetic to the State's needs if the State doesn't conclude the negotiations?" Mr. Huhndorf replied, yes, in my opinion. Senator Poland then asked if CIRI intended to "to draw out the coal?" Mr. Huhndorf said, "Yes, we do."

David Jackman, (at that time) State Co-chairman of the Federal/State Land Use Planning Commission, testified in his own behalf. Mr. Jackman began, "The Commission was presented with the rudimentary outline of this land exchange at one of its earlier meetings. They communicated their views of general approval for this kind of a land trade effort." "The Commission viewed this proposed trade...as a very highly motivated effort to try to resolve these kinds of problems which are likely to occur time and time again in the next few years in this State." The Commission did authorize me to support legislative reform, "which would set down guidelines and procedures and standards for trades of this kind" and "to move away from the strict equal value cash appraisal type of judgement." Echoing his own feelings, Mr. Jackman said, as for CIRI's extra-regional selection rights, CIRI has an additional 2 1/2 years to select up to 30 townships out of region. Since CIRI, "will try to find

lands that will have high resource value....your displacing 30 townships that otherwise might rank fairly high in the unfolding scheme of State selection." The ext[illegible] egional selection pool, "comes from those very lands that will be the prime candidate for future State selections...and that's the basic sum of my concern."

Testifying in favor of the trade, in order of appearance:

Sam McDowell, representing Alaska Fisheries Resources and the Isaac Walton League
Helen Neinhauser, Anchorage resident
Virginia dal Piaz, President, Cook Inlet Chapeter of the Alaska Conservation Society
Bob Rude, 1st Vice President, CIRI
Jeff Knaebel, Engineer and Engineering Consultant
Douglas Stark, Anchorage Engineer
Andy Camkoff, General Manager, Knik Village Corporation
John Alsworth, Port Alsworth
Nelson Ankapak, Calista Corporation
Carl Armstrong, Chairman, Kodiak Regional Native Corp.
Jack Hession, Sierra Club

and finally Nels Anderson Jr., Chairman, House Resources Committee, read a short statement by the Bristol Bay Native Corporation, in favor of the trade.

Testifying against the trade was Homer Burrel, who said the legislature did not have enough information to approve the trade and Chuck C. Hawley, President of the Anchorage Chapter of the Alaska Miners Association, who said the trade would be "detrimental to mining."

Last to testify was Harold Galliet, Jr., Engineer and Engineering Consultant from Anchorage. Mr. Galliet opposed the trade contending, there is 13 billion tons of "recoverable coal" in the trade area, over 6 times the amount contended by DGGS. Mr. Galliet advanced that at a royalty of only 20¢ per ton, the State would lose 2.7 to 5.8 billion dollars in future revenues. Much of Mr. Galliet's testimony is inaudible. However, copies of his series of articles or his plead ngs filed in Superior Court are available from this office.

Dale P. Tubbs, Deputy Director, Alaska Division of Lands, expressed many of the same reservations voiced by Mr. Jackman concerning the proposed exchange. Mr. Tubbs specifically raised the question of whether the State could transfer mineral rights appertinent to any State land to any party, including the federal government, without a legislative waiver of AS 38.05.125 (requiring that all leases, sales or grants of State land contain a specific mineral reservation). He expressed additional concerns as to whether the proposed exchange would accomplish a consoldiation of State land ownership patterns. Copies of Mr. Tubbs testimony is available on request.

MEETING #5

The hearing on the Cook Inlet Land Trade held Thursday, February 12, continued from the day before.

Mr. Roy Huhndorf, President, CIRI, opened the meeting with CIRI's position in the trade. His testimony echoed presentations previously made to the Committee.

Ross Schaff, State Geologist, Don McGee, Pat Dobey, Cleland Conwell and Steve Hackett, all of the DGGS, made similar presentations to that in Anchorage, February 7.

Bill Fackler, Executive Director, Royalty Oil & Gas Advisory Board and former Deputy Commissioner of Natural Resources, testified in answer to questioning, that he was not involved in the trade negotiations and expressed some reservation over whether or not it was a good trade for the State.

Harold Galliet, Jr., testified echoing his testimony in Anchorage on February 7.

MEETING # 6

A continuation of meetings 4 and 5 held Friday, February 13, 1976.

Opening the meeting was Phil Holdsworth, former Commissioner of Natural Resources, and a present member of the Joint Federal/State Land Use Planning Commission. He expressed concern over the lack of quantification of actual values involved in the proposed exchange. He feels that the State may be giving up far more in mineral value than they are receiving in purportedly equivalent value. In response to a question from Senator Rader, Mr. Holdsworth took the position that the Legislature does not have enough information before it on which to make a sufficiently reasoned decision on whether or not to approve the proposed exchange.

Then we received testimony in favor of the trade from:

Roger Allington, Land & Engineering Officer, Sealaska Corp.
Russ Cahill, Director, Division of Parks, who mentioned the recreational value of land received by the State under the trade.
Ron Hawk, Sierra Club
Odette Foster
Iola Harsons, Knik Canoers and Kayakers

The meeting ended with Mike Smith, Jim Reeves and Monroe Price answering questions.

P.O. Box 1796
Fairbanks, Alaska 99701

February 17, 1976

Honorable John Huber
Pouch V
House of Representatives
Alaska State Legislature
Juneau, Alaska 99801

Dear John:

This is to offer support for the proposed Cook Inlet Region land trade as it has been negotiated by the State of Alaska, Cook Inlet Region, and the U.S. Department of Interior. This is a necessary arrangement for which provisions have been made in the Alaska Native Claims Settlement Act. It is difficult to see how any other arrangement could be made which would satisfy the legitimate concerns of the Cook Inlet Natives.

I am well aware of the intricacies and mechanics of this negotiation and had received a briefing on it at the Department of the Interior last fall. I believe the bargaining was done in good faith. Ultimately, this arrangement helps to put land into private ownership which is one important aspect of the state's future economy.

Please let me know your views on this subject. Thank you for your consideration of these views.

Sincerely,

Jim Kowalsky

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

December 26, 1975

The Honorable
John Huber
Box 2591
Fairbanks, Alaska 99707

Dear John:

Over the past months, many of you have heard varying reports regarding the Cook Inlet Land Exchange. During the extensive public process which followed initial announcement of the proposal, a special briefing was held for legislators which some of you attended, and a subsequent detailed briefing was held for the Legislative Council which was also well attended. Because some of you have not been able to attend these meetings, I do want to bring the matter to your attention, give you a current status report, and indicate my intention to bring the issue before you.

The attached press release, issued at the time I indicated I would give my support to the final agreement, is a good summary of the agreement and the process which I intended to follow. As a matter of policy, which I would have demanded when I was a legislator, I intend to lay this entire matter before you, and to provide full documentation and support. Should the Legislature disapprove of the exchange, you have my pledge that I will not pursue to its implementation.

I obviously believe it is right, and perhaps the only wise course the State could take. The final agreement has passed Congress with the support of our entire delegation, and now resides on the President's desk. The State is the final link, and you are part of it. I look forward to discussing this with you, for it is a unique and cooperative solution to a difficult problem. I thought you would appreciate this report, and look forward to seeing you in January.

Sincerely,

Jay S. Hammond
Governor

Enclosures

STATE OF ALASKA
FICE OF THE GOVERNOR
JUNEAU

JAY S. HAMMOND
GOVERNOR

NEWS RELEASE

RECEIVED
DEC 11 1975
Department of
Natural Resources

FOR INFORMATION CONTACT:
Scott Foster, Press Secretary
Office of the Governor
Pouch A Juneau, Alaska 99811
OR PHONE: 907-465-3500

GOVERNOR HAMMOND SUPPORTS COOK INLET LAND EXCHANGE PROPOSAL IN CONGRESS
December 9, 1975
#301

Governor Jay Hammond has given Administration support to a Congressional amendment authorizing Federal authority for the Cook Inlet land exchange. Hammond said, "I am today authorizing Administration support for the Cook Inlet land exchange. We join with the Cook Inlet Region and the Department of the Interior in this proposal to Congress which resolves a series of legal and land management problems in the Cook Inlet Regional area to the benefit of Alaska as a whole."

The State has little choice in the timing of Congressional consideration of the amendment. It is expected the House Interior Committee will act on December 10, on amendments to the Alaska Native Claims Settlement Act, of which this land trade will be a part. Before a final land exchange agreement is consummated, however, it will also require approval from the Cook Inlet Regional Corporation and the State.

Hammond said, "It is the clear policy of this Administration to support open government, particularly on matters which affect the future of State resources so substantially. For this reason, I have directed that prior to the time the State gives its final approval to this agreement, the matter be submitted to the

Alaska Legislature for review. The State will agree to the land trade unless the Legislature disapproves it within 60 days of the opening of the Session."

Hammond also said he would make available to the Legislature detailed documents to explain the Administration's support of the land trade. At the same time, he said, the Administration would investigate the entire area of future land exchanges of this magnitude with the Legislature. He also said he would seek constructive legislation to ensure the public interest is protected in these future instances.

Hammond pointed out this proposal was presented publicly on October 2. Since that time, it has been exposed to a series of public hearings, briefings, and comments. As a result there have been substantial changes made in the agreement which will be presented to Congress.

Hammond said these changes, most of which will improve the value of the exchange to the State, include:

1) a reduction by 75 percent of the amount of known and recoverable coal deposits which would have been conveyed in the Beluga area to the Cook Inlet region and substitution of speculative coal areas;

2) the additional conveyance of the Campbell tract from the Department of the Interior to the State and the ultimate transfer of the Point Campbell and Point Woronzof properties to the State or the Anchorage Municipality as soon as possible;

3) a provision giving other Native regions control over Cook Inlet selections in other regions;

4) the addition of substantial State control over other Cook Inlet Region selections from a pool of Federal surplus property in the Cook Inlet area;

5) a reduction of the 30 townships the State was to receive from the Department of the Interior in the Bristol Bay area to 25 and the substitution of five additional townships for the State in the Lake Chakachamna area;

Hammond said, "These changes were all undertaken as the result of the public participation to make the exchange sensitive to the legitimate interests expressed during the period since the original proposal was presented."

In announcing the Administration's position, Hammond said, "It is the opinion of the Attorney General that authority exists to undertake the proposed land exchange. At the same time other detailed research leads to our finding that the exchange will result in an excess value for the State over that

received by either of the other parties. This conclusion does not include an assessment of the unquantifiable values connected with gaining control over important resource lands in the Talkeetnas or other valuable land management patterns which would accrue to the State."

Hammond said the decision was reached only after careful consideration of many factors including: a description of the implications of the exchange, an outline of the objectives, a broad public participation, a response to the public comments, an analysis of legal authority and value considerations, and issue analysis.

The Governor said, "Our analysis shows that the implications of failing to proceed are substantial and represent a number of possible results that are extremely detrimental to the best interests of the State of Alaska."

-30-

RESOURCE ASSOCIATES OF ALASKA, INC.
3230 AIRPORT WAY, FAIRBANKS, ALASKA 99701
TELEPHONE: (907) 479-6231 / 6097
TELEX: 090 35402

February 20, 1976

Mr. John Huber
Alaska State Senate
Pouch V
State Capital
Juneau, AK 99801

Dear Senator Huber:

I feel that it is in the best interest of the State of Alaska to approve the Cook Inlet-State-Federal Agreement. This Agreement does the following for the State of Alaska.

(1) Nets 30 more townships of land (691,200 acres) to State above entitlement. The State needs all the land it can get from the Feds and this is the last chance to get it.

(2) Provides the State with an opportunity to select valuable future mineral lands from withdrawals to be abolished by the Agreement.

(3) Protects the State-Federal Agreement of September 1972 involving 45,000,000 acres of valuable mineral lands.

(4) Increase likelihood of early mining at Beluga which will generate tax revenues in excess of lost royalties.

(5) Increases the land tax base of boroughs in the Cook Inlet basin by 453,888 acres.

(6) Provides lands in private ownership in the Anchorage basin badly needed for expansion.

(7) Provides for Native owned lands in the 17D-1 areas outside the region. These will be private lands which can be bought by all and the existence of which helps prevent formation of more grand park plans by the Federal government.

(8) Resolves pending litigation which is adverse to the State's best interest.

I believe that the Agreement is in the best interest of the State of Alaska and should be passed in an expeditious manner.

Sincerely yours,

Lawrence E. Heiner

LEH/dc

MEMORANDUM

State of Alaska

Department of Natural Resources
Division of Geological & Geophysical Surveys

TO: Michael C.T. Smith, Director
Division of Lands

DATE: January 2, 1976

FILE NO:

THRU: Guy R. Martin, Commissioner
Department of Natural Resources

TELEPHONE NO:

FROM: Cleland N. Conwell CNC
Mining Engineer

SUBJECT: Mineral Analysis of Proposed Cook Inlet Land Trade

On or about the 8th of October, Ross Schaff, Don McGee, and I met with you in your office to advise you of the value of coal land the State was proposing to give away. It is my recollection that we advised you at that time of the value of coal on these lands and of work in progress by the private sector in exploring the Beluga coal field. As I recall, all three of us, especially Ross and I, expressed personal disproval of the trade. It was and is our opinion that some of the most valuable land in the State is being traded for land that has little or no economic potential.

In direct comment on the articles by Mr. Galliett:

Don McGee and K. O'Connor in AOF 51, page 7, estimate 7.8 billion tons of coal in the Beluga field. Therefore, Mr. Galliett has a reference from a report of the Alaska Geological Survey. My only comment on the first article is that recovery of 50% of the coal is low by t[illegible] standards.

In reference to the second article, it is my understanding that Fish and Game have control of fishing and the streams. I believe that this is covered in Section 16 of the State Statuates, so there is no need to control the Lake Clark or Iliamna areas for the fishing potential.

In the 3rd article, Galliett appears to be accurate. I am sure we could check on the number of natives and the allocation, but the figures are approximately those that I have read.

With regard to the specific "Lands to be given by the State to CIRI":

Ft. MacKenzie (Appendix C - 1.B)and This is within the Anchorage area and is a valuable section for port facilities.

Knik-Willow (Appendix C - 1.B and 3) — This is an excellent recreation area near Anchorage. It contains the Nancy Lake State Recreation area, Meadow Creek Campground, and many lakes. There is both a coal potential and oil and gas potential in the area. Coal at one time was mined at Huston.

Kashwitna (Appendix C - 1.B) — This is prime agricultural land - Ref: Alaskas Agricultural Potential, Alaska Rural Development Council, Publication No. 1, 1974. It also contains a site selected for the future capitol of Alaska. It is accessable by road and railroad, and has many home sites. The land has potential for fossil fuels and uranium.

Chickaloon (Appendix C - 1.D and 3) -- This is excellent coal land and part is under coal lease. Coals in this area have a higher calorific value than the Beluga area, i.e., 7,200 Btu Beluga vs. 12,000+ Btu Matanuska. Some of the Matanuska coals have coking qualities. Therefore, Matanuska coals have a higher market value than Beluga coals. The railroad right-of-way to the area is retained by the Alaska Railroads. There are excellent home sites in this area.

Alexander Creek (Appendix C - 1.D and 3) — Coal, oil, gas, and uranium potential.

Salamatof (Appendix C - 3) and Kenai Peninsula (Appendix C - 1.E and 3) — These are excellent coal lands. The coals are nearly horizontal, therefore, favorable for mining. Several beds at least 5 feet thick underlie the area. Undoubtedly there are at least 11.7 billion tons of coal in these areas. In addition to the loss of coal there would be a loss of recreation along the beaches of the peninsula. This includes both clam digging and fishing. I have been informed by native groups that they intend to protect these rights, and prohibit non-natives from trespassing. A law suit on this matter is presently in court (Edwardsen vs. Morton). These lands also have a high agricultural potential. In the case of strip mining the agricultural potential could be utilized the year following cessation of mining.

Beluga (Appendix C - 2(a)) — This area contains the outcrops of the Capps and Waterfall coal beds which can have respective thicknesses of 27 and 50 feet. Some sections could contain 70 million tons of coal with a stripping ratio of less than 3 to 1. One township could contain 2.5 billion tons of coal. This is also an area of high agricultural potential, and experimental work has proven that reclamation can be done after strip mining.

In regard to the lands to be given to the State by the Federal Government:

a. In general, these lands are underlain by Jurassic intrusives that have a low mineral potential for hard minerals, lack equivalent agricultural potential, lack the recreational value, because of inaccessability, and, if not selected by the natives might still be open to selection by the State.

In regard to the report by Dobey, Welch, and O'Connor:

. There are many misleading statements in the report. I find errors in the calculations regarding the discounted cash flow. The Stanford Research Institute has a report issued in 1975 that gives figures that conflict with those of Robert Bottge. Nevertheless, assuming the inaccurate figures do have meaning, should the State give away such valuable revenue producing land?

By a separate memorandum I am requesting the report by Dobey et. all, be kept for in house use and not issued as an open-file report by the Division of Geological and Geophysical Surveys.

MEMORANDUM

State of Alaska

Department of Natural Resources
Division of Geological & Geophysical Surveys

TO: Guy Martin, Commissioner of Natural Resources
THRU: Gil Eakings, Acting State Geologist

DATE: January 2, 1976

FILE NO:

TELEPHONE NO:

FROM: Cleland N. Conwell
Mining Engineer

SUBJECT: Economic Resource Analysis of Measured and Indicated Coals November 28, 1975
P.L. Dobey, J. Welch, K.M. O'Connor

At the request of Gil Eakins, Acting State Geologist, I have reviewed the subject report. I find that the report is misleading, contradicts Alaska Geological Survey open file report #51, is inaccurate and biased. I respectfully request that the report not be published as an open file report under your name and that of Ross G. Schaff. It may be of some use to Mike Smith within the department, but I feel that the quality is too low to justify publications as a Division Report. If published, the report certainly should be reviewed by Ross Schaff beforehand.

DGGS-1 (REV. 6-73)

MEMORANDUM

State of Alaska

Department of Natural Resources
Division of Geological & Geophysical Surveys

TO: Michael C.Y. Smith, Director
Division of Lands

DATE: January 2, 1976

FILE NO:

THRU: Guy R. Martin, Commissioner
Department of Natural Resources

TELEPHONE NO:

FROM: Gilbert R. Eakins GRE
Acting State Geologist

SUBJECT: Mineral Analysis of Proposed Cook Inlet Land Trade

In response to your letter of December 29, 1975 to Ross Schaff, I requested Cleland Conwell, State Mining Engineer, to review the three newspaper articles by Harold Galliett and again to assess the tracts of lands involved in the proposed land trade.

I concur with Mr. Conwell's assessment that it is not in the best interests of the State to make the proposed land trade. A purely economic view indicates a high potential dollar value of the tracts to be traded to the Cook Inlet Native Association. Large reserves of quality coal are known, agricultural lands are present, and a reasonably good potential exists for petroleum and uranium. In addition, the lands to be given to CINA have wisely been selected near populated areas and where industrial and population growth may be expected. We believe the potential revenues are very significant and that an attempt to put a discounted cash value on the resources today is not a fair evaluation.

In contrast, the lands to be received by the State in the trade do not appear to have an important mineral potential, are relatively inaccessable, and are not suitable for development.

cc: Ross Schaff, State Geologist

COOK
INLET
LAND
SWAP

David Jackman
February 25, 1976

WHAT'S WRONG WITH THE COOK INLET LAND TRADE

Simply a bad deal for the state

For all its alleged complexity, the proposed Cook Inlet land trade is not that hard to understand. In return for 52 townships (approximately 1.2 million acres) of federal lands that are mostly remote and of questionable value, the state is giving the federal government 21.5 townships (approximately .5 million acres) of very valuable lands that the federal government will in turn use to solve two nettlesome federal problems:

1) The four-year dispute over the adequacy of the lands withdrawn by the Interior Department for the satisfaction of Cook Inlet Native Corporation's land selection rights; and

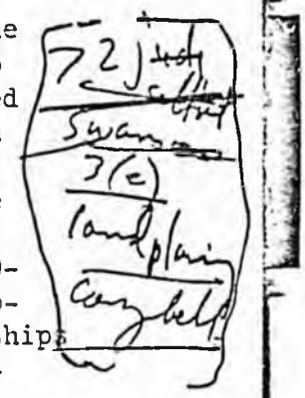
2) The need to get private ownership (in the form of pending Native corporate land selections) out of the Lake Clark area, so that the National Park Service will have a more salable national park proposal for the d-2 lands in that area.

The 21.5 townships the state is giving up are located on the Kenai peninsula (5 townships), in the Mat-Su Valley (3 townships), and in the Beluga area across northern Cook Inlet from Anchorage (13.5 townships). All of these areas are within zones very favorable for the occurrence of oil and gas, and the Beluga area is also a known coal area with reserves of immense proportions. All of these lands are low-lying and well-suited for future settlement. Furthermore, because they are located near the population centers of southcentral Alaska, they also have extremely high importance for recreation and public use by the common man who cannot afford to fly-in long distances.

The 52 townships the state will receive in exchange are for the most part quite remote, have little income producing potential, and are of relatively little value for either future settlement, the protection of state wildlife resources, or even public recreational use. Half of these lands (26 townships) are located in the Mulchatna river drainage northwest of Lake Iliamna. Another 7 townships are located in the adjacent Tutna Lake area approximately 25 miles west of Lake Clark.

Eleven townships will be adjacent to Kamishak Bay on the west coast of Cook Inlet, southwest of Augustine Island. There will also be 8 townships in the Talkeetna Mountains and the 4,000 acre Campbell tract in the Anchorage bowl.

There are many other aspects of this trade to be reviewed, but the basic inequality of the land values alone is enough to condemn it. To put it in perspective, consider one of the worst hypotheticals advanced by proponents of the trade: that Cook Inlet Inc. wins its law suit on appeal (it has already lost at the trial level), and that Interior is also ordered to break its 1972 agreement with the state and make state selected lands available for Cook Inlet's regional selections. Cook Inlet is due to receive approximately 54 townships total. At least 20-30 townships presently withdrawn from federal lands are probably acceptable to Cook Inlet region. Therefore, at most, 24-34 additional townships would then be made available from remote, generally lower-value state-selected lands, either in the area across the Alaska Range toward the Stony River country or northwest of the Susitna valley toward Denali.



According to any scale of values these 24-34 townships would be worth far less than the 21.5 townships the state plans to give up in the proposed trade. It is worth re-emphasizing that we would be less out-of-pocket with this "worst hypothetical" than with the proposed trade, and even the advocates of the trade place the likelihood of this hypothetical at less than 20 percent.

The Campbell Tract

In contrast with the other lands to come to the state, the 4,000 acre Campbell tract in the heart of the Anchorage bowl is valuable land of the first order. But even this benefit is more apparent than real because either the state or borough was almost certain to get this tract anyway, and in any event it had clearly been placed off limits for Native selection by the federal government. So here as elsewhere throughout this trade we are getting lands we would likely get anyway, and protecting public interests that were already protected.

Even advocates of the trade concede that the state "would stand a respectable chance of obtaining the (Campbell tract) lands at some time in the future" under the federal Recreation and Public Purposes Act. High sources within the Interior Department emphasize that this was almost certainly to be so. These same sources also stated that in earlier discussions between the Interior Department and Cook Inlet Region, Interior announced its firm opposition to this tract being made available for Native selection. The only Anchorage-area tracts that

Interior seriously considered letting the Natives select were Fire Island and surplus lands from Fort Richardson, and these may well still go to Native ownership under the trade agreement.

Much of the Campbell tract was further protected from any possibility of Native selection by the two-mile buffer zone in Section 22(1) of the Settlement Act. Finally, there is every indication that the federal government intended to keep this tract in public open space use because of its importance as a watershed and recreational area. So about all the state "gained" here was the administrative expense and the "pride of ownership".

A Cloud Over the North-South Runway

Another much-touted plus of the proposed trade agreement is that it will insure the early transfer of the Point Woronzof, Point Campbell and Goose Lake tracts to the state. In the words of the agreement, "such lands shall be reserved by the United States for early conveyance to the State for park and recreation purposes...." But this language creates a new problem in view of the importance of the Woronzof tract for the proposed north-south runway at the Anchorage airport.

Without this agreement the state or borough was still very likely to get most of these tracts under the Recreation and Public Purposes Act. The terms of that Act are broad enough to permit a "public purpose" such as an airport runway. The more restrictive language regarding "park and recreation purposes" in the proposed trade agreement may well have the effect of blocking such an important public use.

No Special Protection for Fisheries

The importance for the state of getting lands in the Iliamna area has been tied by the advocates of the trade to the protection of Bristol Bay fishery values. Presumably this extra protection would occur through state ownership of the upland drainages adjacent to important spawning streams. So far so good.

However, under the actual terms of the trade, the state will not get a single acre within the Iliamna Lake watershed which is the key salmon producer for the Bristol Bay fishery. The lands the state does receive are in the upper Mulchatna River drainage, an area of very minor importance for the Bristol Bay fisheries.

With or without the proposed trade, the State will have an opportunity, recognized in Section 17(d) of the 1971 Settlement Act, to select lands in the Iliamna drainage within the Bristol Bay village withdrawals after

Native selections are completed. Furthermore, the fishery values of public lands in that area are perfectly well protected with the lands in federal ownership, and nothing significant is gained by transferring them to state ownership. Add to this fact the existence of state regulatory tools such as the Anadromous Fish Stream Act which can be used to protect fisheries habitats.

Out-of-Region Selection Rights

Under the proposed trade agreement, Cook Inlet Region will have an additional three years to identify and select approximately 30 townships of land from available federal lands outside the region. They are prohibited by the agreement from selecting any lands the Federal Government wants, such as d-1 or d-2 lands included in the Secretary's park, refuge, and forest proposals, or any of the d-1 buffer lands around these areas called "zones of ecological concern". This will throw Cook Inlet into those lands that would otherwise be prime candidate areas for State selection. Cook Inlet Region will have the opportunity to take the best available lands from a resource utilization standpoint.

The out-of-region selections constitute a loss to the State because these are lands that otherwise would have been available for State selection. (Approximately 35 million acres of land remain to be selected out of the Statehood Act grant of 103.5 million acres.) Cook Inlet will be looking for the same kind of income-producing resource lands or other valuable lands that would be high on the list for State selection. With respect to the millions of acres that could be nominated under this procedure, there will be a freeze on the processing of any State selections for three years.

Thirty townships broken up in isolated private tracts will create the same kind of land management problems outside Cook Inlet Region that it was the partial purpose of this trade to avoid within this region. So in order to consolidate ownership in the Cook Inlet area, we are furthering a fragmented land pattern elsewhere in the state.

Impact on the Proposed Lake Clark National Park

This trade will make it difficult for the State to ever oppose the establishment of a National Park or other area managed by the National Park Service in the Lake Clark area. The proposal would result in the return of certain key lands around Lake Clark to federal control, and would prevent further Native selections in this area. In the agreement, the Secretary, Cook Inlet Native Corporation, and the State all acknowledge that there are nationally significant resources in the Lake

Some of the federal lands to be included in this pool, without this agreement, would be available for State selection under the 90-day preference right guaranteed in the Statehood Act. These are potentially very valuable lands, and could include tracts such as Fire Island and surplus lands at Fort Richardson. The $500/acre equivalent formula agreed on in the proposal would imply total land values for this 6 township pool of over $69 million, and the State would have the right to veto only 1,500 acres from this pool.

Disposal Without Planning or Classification

As the agreement is written the state does not know exactly what lands will go to Cook Inlet Corporation on the Kenai or in the Mat-Su Valley. The specific lands are to be identified over the next eighteen months "to the extent possible by mutual agreement" from five selection pools: the Point McKenzie pool, the Knik-Willow pool, the Kashwitna pool, the Chickaloon pool, and the Kenai pool. If the state and the Natives cannot agree, then the state identifies one and a half times their entitlement, and Cook Inlet chooses.

This process of mutual agreement may work very well or it may break down completely. It is impossible to know now. In either event eighteen months is hardly adequate time to complete the kind of land use planning and classification process that would normally preceed the disposal of such large tracts into private ownership. Private ownership of more land in these areas may make good sense, but the state is losing most of its ability to determine what specific tracts are best suited for private development in terms of local government needs, public services, and provision for recreation and open space lands. It is true that local zoning could serve as a stopgap, but it can never be as effective as a wise and carefully thought out disposal policy.

Swanson River Oil Revenues

Without this proposed agreement, there is some chance that either an administrative or a legislative settlement arrived at by the Federal Government alone might give Swanson River oil revenues to Cook Inlet Region. At present, the State receives 90 percent of these royalty revenues although there is a recent opinion of the U.S. Comptroller General challenging the right of the State to these revenues.

Under this Comptroller General's opinion, the State may lose Swanson River revenues anyway unless the State is successful in legally overturning this opinion. Also, in the absence of a finding by the Secretary that these lands are no longer necessary for the Moose Range, federal legislative action would probably be required to give these sub-surface benefits to Cook Inlet Region.

Serious Breach of Public Trust

Aside from its citizens, this state's public land is its most basic asset. It should go without saying that both the legislative and the executive branches should use the highest standard of care in managing or disposing of this land patrimony.

The only standard that presently exists in state law against which land trades can be measured is equal value. This legal standard has always been viewed in the past as meaning equal appraised dollar values. Where this was not possible a cash equalizer was permitted.

Even if we now allow this equal value test to be broadened into a public benefit versus public cost analysis, there has been no such rigorous and complete cost-benefit comparison offered by the administration that can meet even such a liberalized test. Thus we are asked to discard the only standard that presently exists in state law, and to rely on the individual judgement of one or two administrators. To borrow Governor Hammond's analogy of Alaska, Inc., the Cook Inlet trade appears to constitute an unwarranted dissipation of corporate assets.

Better Alternatives Are Still Available

It is simply not true that this agreement must be approved if Cook Inlet is to have a satisfactory resolution of its land selection problems. The federal legislation that authorized the Interior Department's participation in the trade recognized that the parties might not be able to finally agree, and provided full protection for Cook Inlet's selection rights in that event.

This Act requires the Secretary to report to Congress by April 15th of this year on the implementation of this agreement. If there is no agreement at that time, the Secretary must until the end of 1976 hold on to those federal lands that would have gone to Cook Inlet Corporation so that Congress can consider an alternative solution. All of Cook Inlet's original selection rights would be restored, and they would continue to pursue the appeal of their law suit.

The simplest alternative to the proposed trade would be for Interior to simply withdraw additional d-1 and d-2 federal land within Cook Inlet region for Native selection. This would require neither legislation nor a single acre of state land.

A second quite simple alternative is suggested by the proposed trade agreement. Since 30 townships of out-of-region selection rights have already been approved by Congress as a part of this trade, Congress could

pass a two-sentence amendment simply directing the Secretary to specifically withdraw up to 90 townships from within these same d-1 land areas outside the region as an additional deficiency area for Cook Inlet's regional selections. The other regions have already accepted this concept in the present trade, and by requiring the selection area to be identified and narrowed down, state selections would not be frozen over so broad an area.

Conclusion

It is now up to the state legislature to either approve or disapprove this proposed trade. If they choose not to approve it, they may well decide to suggest an alternative that would throw it back into federal hands. Whatever course is taken they must eventually decide the larger issue concerning standards and procedures to govern such trades in the future if the public interest is to be adequately protected.

To: Senator Kay Poland

From: George C. Silides, P.E.

Subject: Cook Inlet Land Trade

Transmitted herewith is the final Committee Report on HR 6644. I can find no substantive changes from the preliminary report you received earlier, except that this edition is much more complete.

Pages 1 - 10 represent the final language of the Bill itself as passed. The earlier edition of HR 6644 that we sent you shows, also, the original language that was deleted. Sections 12 and 17 of HR 6644 deal with the land trade between the State of Alaska and the Cook Inlet Native Regional Corporation. Section 12 describes the trade, and Section 17 sets aside the restrictions of the Alaska Statehood Act to permit accomplishment of this and any other and future trade. (Emphasis added).

Pages 10 - 14 constitute a letter of intent. It is noted that the State-Cook Inlet trade was not included in the Purpose description of the original Bill.

Pages 14 - 54 are a Section - By - Section Analysis. Section 12, which describes the trade in general terms begins on page 30. A detailed description of terms and conditions of the trade begins on page 35 and extends through page 52. The present prohibitions of the Statehood Act and the consequences of its being amended are recited at the bottom of page 34 and the top of page 35.

Pages 54 - 58 describe changes in existing law that were caused by HR 6644. Section 17 on page 56 is germane.

Pages 58 - 85 include reports by the various federal departments concerning their feelings on the measure. Not all are favorable. The Department of Agriculture specifically objects to the inclusion of Section 12 on the basis that the section reopens conflicts that ANCSA was intended to resolve.

The Congress had taken due note of the existing debate as to the propriety of the State's involvement and of the nature and extent thereof. The Governor has promised that he will not implement the terms of Section 12 of HR 6644 unless the Legislature concurrs. Section 12 (c) (3) (i) (center-of page 8), calls for a report by the Secretary of the Interior to Congress by April 15, 1976. The Legislature's decision must reach him in time to prepare that report. He reserves until December 18, 1976 to make other

BRIEF SYNOPSIS OF
THE PROPOSED COOK INLET LAND TRADE

The following is a short summary of the major aspects of the proposed Cook Inlet Land Trade. The "agreement document" which forms the basis of the agreement among the three parties is found in the U.S. House of Representatives' Report No. 94-729 dated December 15, 1975. The "agreement document" is found on page 35 of that report and is entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area." To assist parties interested in the specific details of the "agreement document", appropriate page and section references follow each specific point in the summary below. In addition, where appropriate, a map reference refers to the attached map.

I. COOK INLET REGION RECEIVES:	Agreement Document (Page) & Section Reference	Map Reference
A. FROM FEDERAL GOVERNMENT:		
1. 10,000 acres excised from the Kenai National Moose Range abutting the western end of Lake Tustumena (with the following covenant: no sale for 25 years; if then sold, first right of refusal to the federal government; strict development restrictions along edge of Lake Tustumena).	(35)I-A	--
2. Up to 9.6 townships of sub-surface rights to oil, gas and coal (subject to normal Moose Range surface restrictions; coal may only be removed in a liquid or gaseous state).	(37)I-B (43)IV	--
3. All federal lands in the following:		
(a) T.10S., R.9W., F.M. (near Healy).	(37)I-B-(1)	--
(b) T.20N., R9E., S.M. (Glenn Highway near Matanuska Glacier).	(37)I-B-(1)	--
(c) T.1N., R.21W., S.M. (west side of Cook Inlet - 15 sections - title to metalliferous minerals only; Secretary must approve surface mining plans).	(37)I-B-(2)	
(d) T.1S., R.21W., S.M. (west side of Cook Inlet - 18 sections - ownership in fee; surface use only for mining needs).	(37)I-B-(3)	--

	Agreement Document (Page) & Section Reference	Map Reference
4. Outside Region - 29.66 townships outside Cook Inlet Region (from native deficiency or d(1) lands in the Ahtna, Bristol Bay, Calista, Chugach or Doyon Regions; certain protections for the Federal government, State and regional and village corporations).	(38)I-C-(1)	--
5. Within Region pool (up to 138,000 acres of federal surplus lands; any acres selected come from "out-of-region" selection entitlement; State has certain safeguards to protect public interests).	(38)I-C-(2)	--
B. FROM STATE:		
1. 1.2 townships of scattered tracts (lands in the vicinity of Point McKenzie, Knik, Kashwitna and Chickaloon).	(48)I-AtoD	Appendix C 1A-D
2. 1.8 townships to the certified native villages and groups of Chickaloon, Knik, Alexander Creek, Salamatof, Ninilchik, Montana Creek and Caswell (to trade villages out of Lake Clark).	(50) 3	Appendix C 3
3. 5.0 townships on the Kenai Peninsula.	(49)I-E	Appendix C 1-E
4. 13.5 townships in the Beluga area	(49) 2	Appendix C 2
21.5 TOWNSHIPS TOTAL		
STATE RECEIVES:		
A. The following lands over and above its statehood entitlement:		
1. 26 townships in the Lake Clark area.	(50)	Appendix D
2. 7 townships in the Tutna Lake area.	(51)	Appendix G
3. 8 townships in the Talkeetna Mountains.	(51)	Appendix G

	Agreement Document (Page) & Section Reference	Map Reference
4. 11 townships on Kamishak Bay (near Mt. Augustine).	(51)	Appendix G
52 TOWNSHIPS TOTAL		
B. The right to select an additional 12.4 townships in the Talkeetna Mountains and Koksetna River areas.	(52)	Appendix G
C. Immediate conveyance of approximately 4,000 acres in the Campbell Tract in the heart of the Anchorage Bowl.	(42)III-B	Appendix F
D. Early conveyance of Point Woronzof, Point Campbell and Goose Lake withdrawals.	(41)I-C-2(e)	--
E. Protection of approximately 12 townships of land previously selected by the State in 1972, but which would be selected by Cook Inlet Region if the proposed land trade is not effected.	--	--

III FEDERAL GOVERNMENT RECEIVES:

A. No lands directly, but will retain title to a number of specific townships within Cook Inlet Region which the Regional Corporation will otherwise select.

B. Several other benefits not directly related to the receipt of land:

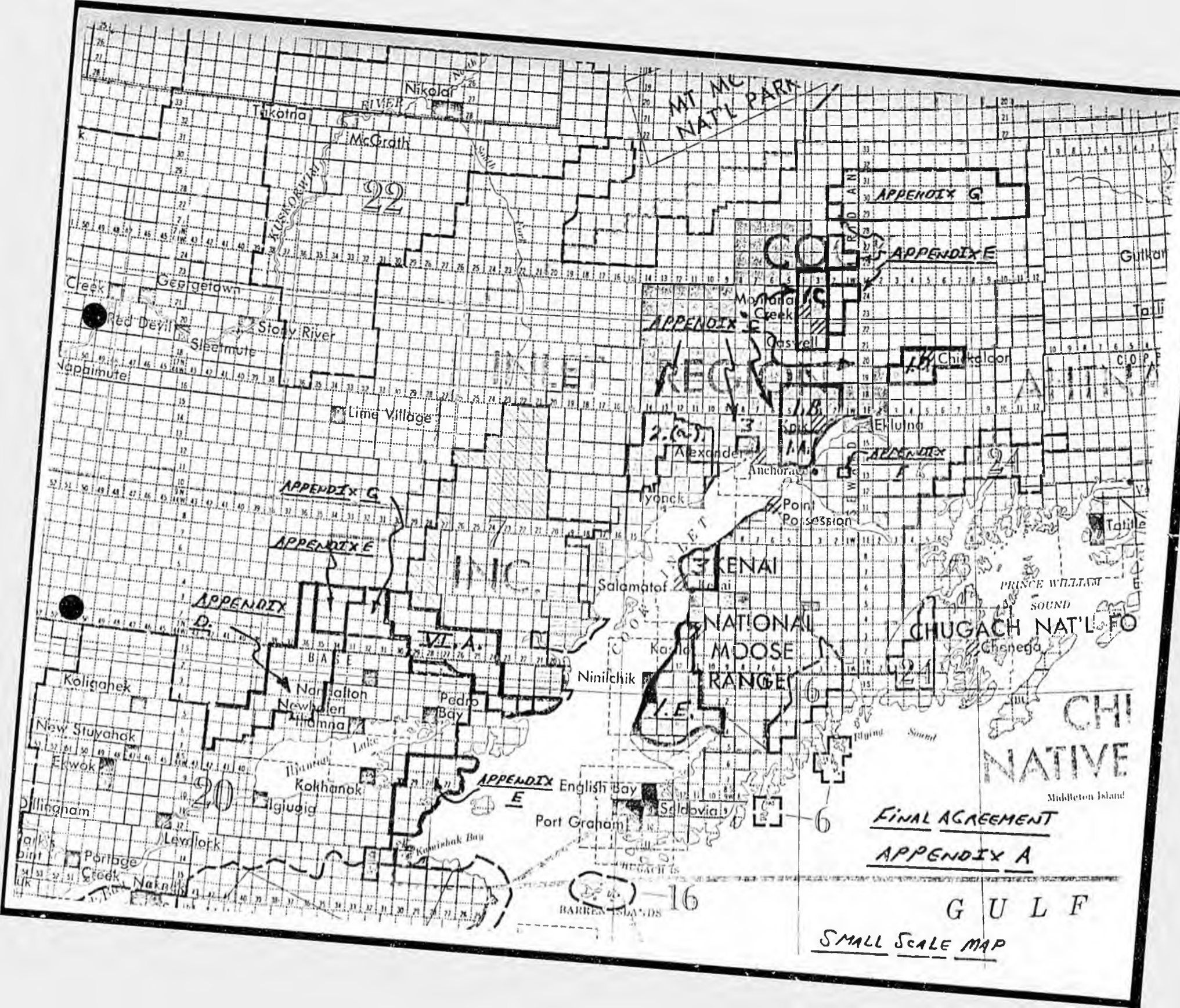
(a) Settlement of Cook Inlet Region's entitlement under ANCSA.
(b) Settlement of Cook Inlet Region's suit against the Secretary.
(c) Minimal impact upon lands in the Kenai National Moose Range.
(d) Improoved land ownership pattern in the Lake Clark area.

IV MISCELLANEOUS PROVISIONS:

A. No oil and gas fields will be transferred to native ownership (all revenues currently received by the State will continue).

B. All lands transferred to native corporations will contain ANCSA safeguards (e.g. easements).

C. All state lands conveyed will additionally contain dedicated or platted section line easements and highway or other rights-of-way.


Nikolai
Takotna
McGrath
KUSKOKWIM
22
APPENDIX G
APPENDIX E
Gulkana
Cantwell
Red Devil
Stony River
Sleetmute
Napaimute
Lime Village
APPENDIX C
Chickaloon
Eklutna
Alexander
Anchorage
Tyonek
Point Possession
APPENDIX G
APPENDIX E
APPENDIX D
KENAI
Salamatof
Kenai
PRINCE WILLIAM SOUND
Talkeetna
NATIONAL MOOSE RANGE
CHUGACH NAT'L FO
Chenega
Kalifornsky
Ninilchik
Koliganek
Nanwalek
Newhalen
Pedro Bay
New Stuyahok
Iliamna
Lake Iliamna
Ekwok
Kokhanok
20
Igiugig
APPENDIX E
English Bay
Seldovia
Port Graham
Illiamna
Levelock
Portage Creek
Kamishak Bay
BARREN ISLANDS
16
6
Middleton Island
CHUGACH NATIVE
GULF
FINAL AGREEMENT
APPENDIX A
SMALL SCALE MAP

February 11, 1978

Mr. Roy Huhndorf, President
Cook Inlet Region, Inc.
1211 West 27th Avenue
Anchorage, AK 99503

Dear Roy:

The directors of the Anchorage Chapter, Alaska Miners Association, voted Monday to oppose the Cook Inlet compromise, and we advised Kay Poland and Nels Anderson of our position and reasons by telegram. Enclosed is a copy of the wire.

We realize that it again throws Cook Inlet into unknown ground and that it is possible that another settlement compromise could be worse. However, the actions detrimental to mining--particularly uncertain timing and making definite commitments to a Lake Clark National Park--were more than we could go along with.

The absolute failure of the Department of Natural Resources to go into the negotiation with any knowledge or commitment other than to Parks and Wildlife is the cause of the problem as we see it. We are on record as desiring a better settlement which would give Cook Inlet needed lands. We do not intend to publicize our decision widely.

Sincerely,

C. C. Hawley
Chairman, Anchorage Branch
Alaska Miners Association

ams
Enclosure a/s
cc: Jeff Knaebel ✓
Kay Poland
Nels Anderson

Alaska State Legislature

Senate

JUNEAU, ALASKA

March 4, 1976

MEMORANDUM

TO: ALL MEMBERS

FROM: SENATOR KAY POLAND

We have received copies of the Complaint and Memorandums filed against the Cook Inlet Land Trade in Anchorage Superior Court, and they are hereby transmitted for your information.

These documents, together with the comments of Dave Jackman and Michael Smith, sent you earlier, should give you a reasonable resume of the basic issues.

The earlier packet contained a transcript of the Anchorage testimony plus written material received since that date. Tapes of the Juneau testimony are available but not transcribed because of repetition.

The entire matter will be calendared early next week. The Senate Resources Committee has endeavored to secure testimony from every source for your information.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

J. R. LEWIS and HAROLD H. GALLIETT, JR., Citizens and Taxpayers of the State of Alaska,

Plaintiffs,

vs.

STATE OF ALASKA; GOVERNOR JAY HAMMOND; GUY R. MARTIN, Commissioner of Natural Resources; MICHAEL C. T. SMITH, Director, Division of Lands,

Defendants.

No. 76-1608

COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTION

Plaintiffs, HAROLD H. GALLIETT, JR. and J. R. LEWIS, citizens and taxpayers of the State of Alaska, pursuant to Alaska Civil Rule 23, and on behalf of all citizens and taxpayers of the State, complain and allege as follows:

COUNT ONE

I

Plaintiffs have been and now are residents, citizens and taxpayers of the State of Alaska and reside in Anchorage, Alaska. Defendants are the State and its Governor, Commissioner of Natural Resources and Director of Division of Lands.

II

Plaintiffs are commencing this action in order to permanently enjoin the state from participating in an exchange of lands involving the alienation of subsurface mineral rights belonging to all the people of the State of Alaska. This

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-9477

attempted alienation is in violation of the Constitution of the United States, the Constitution of the State of Alaska, the Alaska Statehood Act, and Title 38, Alaska Statutes.

III

In 1955 the then Territory of Alaska through its legislature, provided for a constitutional convention. Elected delegates adopted a constitution on February 5, 1956 which was ratified by the people of Alaska on April 24, 1956.

IV

This constitution adopted by the people of Alaska served as a basis for subsequent petitions to Congress for statehood and constituted an offer to accept the privileges and responsibilities of that status in accordance with the terms of said constitution.

V

Article VIII, Section 9 of the Constitution of the State of Alaska provided in part as follows:

> Section 9. Sales and Grants. Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources.

VI

Two years after the people of Alaska adopted the above constitutional provisions, Congress passed the Alaska Statehood Act, approved on July 7, 1958. Sec. 6(i) of the Statehood Act is a direct response by Congress to the provisions contained in Article VIII, Sec. 9 of the Alaska Constitution set forth above. The Alaska Statehood Act stated in this section as follows:

> All grants made or confirmed under this Act shall include mineral deposits. The

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0477

> grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express condition that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, . . .

Sec. 6(i) of the Act further provided that any lands or minerals disposed of by the State of Alaska contrary to the provisions of the above section would be forfeited to the United States by appropriate proceedings instituted by the Attorney General.

VII

By Public Law 92-203, 85 Stat. 688, approved December 18, 1971, Congress enacted the Alaska Native Claims Settlement Act. This Act provided for the fair and just settlement of all claims by native groups in Alaska based upon their aboriginal land claims. All prior conveyances of public land pursuant to federal law and all tentative approvals pursuant to Sec. 6(g) of the Alaska Statehood Act were declared to be an extinguishment of the aboriginal title of Alaska natives. The Act further provided for 12 geographic regions within the State and for appropriate regional native corporations which were given the right to select land and share in the revenues from the sale of minerals. Sec. 12 of the Alaska Native Claims Settlement Act provided for the selection of land by each village corporation within the township in which the village is located, plus an area that would make the total selection equal to the acreage to which the village was entitled under Sec. 14 of the Act.

VIII

Because of existing federal withdrawals, state land selection and other non-native settlement patterns within the Cook

RAYMOND A. NESSETT
ATTORNEY AT LAW
837 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-3477

Inlet region, Cook Inlet Region, Inc., a native corporation, was not able to select lands which it considered of like and similar character under the formula established by the Alaska Native Claims Settlement Act. For approximately three years following the enactment of this Act, Cook Inlet Region, Inc. negotiated with the Secretary of the Interior in an attempt to insure its land selection of a similar and like character.

IX

Cook Inlet Region, Inc. was dissatisfied with these negotiations with the United States Department of the Interior, and it filed suit in a District Court. Negotiations continued, however, and the solicitor for the Department of Interior made an offer to convey to Cook Inlet Region, Inc. ten surface and fifteen subsurface townships within the Kenai National Moose Range, including the Swanson River oilfield, as well as additional federal lands in the then Greater Anchorage Area Borough. These lands included land at Point Woronzof, Point Campbell, and a sizable portion of the Campbell air strip tract. Cook Inlet Region, Inc. declined this offer and it was later withdrawn by the Department of the Interior.

X

The United States District Court ruled in favor of the Secretary of the Interior and against Cook Inlet Region, Inc. in February of 1975. Pending the appeal of the case to the Ninth Circuit Court of Appeals, Cook Inlet Region, Inc. appealed to Congress for legislative relief. Despite the fact that Cook Inlet Region problems were solely with and concerning the federal government and federal land, the State entered into the negotiations in an attempt to help solve the problems between the Cook Inlet Region and the federal government.

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-5477

X

The United States District Court ruled in favor of the Secretary of the Interior and against Cook Inlet Region, Inc. in February of 1975. Pending the appeal of the case to the Ninth Circuit Court of Appeals, Cook Inlet Region, Inc. appealed to Congress for legislative relief. Despite the fact that Cook Inlet Region's problems were solely with and concerning the federal government and federal land, the State entered into the negotiations in an attempt to help solve the problems between the Cook Inlet Region and the federal government.

XI

The State, Cook Inlet Region, Inc., and the Department of the Interior entered into the negotiations concerning the exchange of lands pursuant to Sec. 22(f) of the Alaska Native Claims Settlement Act which provided as follows:

> The Secretary, the Secretary of Defense, and the Secretary of Agriculture are authorized to exchange any lands or interests therein in Alaska under their jurisdiction for lands or interests therein of the Village Corporations, Regional Corporations, individuals, or the State for the purpose of effecting land consolidations or to facilitate the management or development of the land. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.

XII

Pursuant to the exchange provisions cited above, the State volunteered the trade of various patented lands to the Department of the Interior for exchange and grant to the Cook Inlet Region, Inc. The terms of the settlement were, in summary, that the State of Alaska obligated itself to convey lands to the United States for exchange with Cook Inlet Region, Inc. in accordance with "Terms and Conditions for Land Consolidation and Management in Cook Inlet Area" made a part of the report from

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 276-0477

the Committee on Interior and Insular Affairs accompanying HR 6644, the amendment to the Alaska Native Claims Settlement Act. Further, Cook Inlet Region, Inc. was to dismiss its lawsuit in the case of Cook Inlet v. Kleppe, 75-2232, Ninth Circuit Court of Appeals; and other native village selections under Sec. 12 of the Settlement Act concerning lands within Lake Clark, and other areas outside the Cook Inlet Region, Inc., would be withdrawn to enable the exchange to take place by substituting land outside Cook Inlet region. These terms are summarized in Sec. 12(a) of Public Law 94-204, known as Alaska Native Claims Settlement Act Amendments, approved January 2, 1976. Sec. 12(f) of the Amendments states that all conveyances of lands made or to be made by the State of Alaska in satisfaction of the Terms and Conditions "shall pass all of the state's right, title, and interest in such lands, including the minerals therein, as if those conveyances were made pursuant to Sec. 22(f) of the Settlement Act."

XIII

Sec. 17 of the Amendment purports to amend Sec. 22(f) of the Alaska Native Claims Settlement Act by stating that in any exchange made pursuant to Sec. 22(f), the State may convey its lands, "free of the restrictions of Sec. 6(i) of the Alaska Statehood Act."

XIV

In the "Terms and Conditions" contained within the report accompanying HR 6644, Sec. II at P. 42, the State of Alaska was asked to give its consent to the exchange and settlement agreement within sixty days of the commencement of the 1976 session of the Alaska State Legislature. Upon such consent being given, the State of Alaska is bound to convey to the United States for reconveyance to Cook Inlet Region, Inc. the lands set forth

RAYMOND A. NESSETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0779

within the "Terms and Conditions." Plaintiffs allege on information and belief that said consent must be given, if at all, prior to March 12, 1976.

XV

In an attempt to implement Sec. 22(f) of the Alaska Native Claims Settlement Act, the Alaska legislature, in 1972, enacted what is now Sec. 38.95.060 Alaska Statutes which authorizes the exchange of state land with a native corporation "with the consent of the governor," when the purpose is to effect land consolidations or to facilitate the management or development of the land. Similar to ANCSA, Sec. 22(f), the Alaska Statute provided that exchanges shall be on the basis of equal value, with either party being allowed to accept or pay cash in order to equalize the value of the properties exchanged.

XVI

The governor and the State, through its Commissioner of Natural Resources and Director of the Division of Lands, is proposing to give away large parcels of land and is also proposing to convey the subsurface mineral rights in such a manner as would convey all the coal, oil and gas resources of the lands. The State is proposing to give away the following estimated resources:

Present value of coal	$4,732,000,000
Minimum probable present value of oil and gas	62,500,000
Present value of surface estate	451,695,000
TOTAL	$5,246,195,000

The State proposes to receive the following estimated value as a result of the exchange:

Present value of surface estate	165,917,440

RAYMOND A. NESBETT
ATTORNEY AT LAW
837 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0477

From the above summary of the exchange values, the net result to the State of Alaska is as follows:

Net loss $5,080,187,569

XVII

The proposed conveyance violates the Alaska Constitution and its compact with the federal government through the Alaska Statehood Act. The Alaska Constitution and the Alaska Statehood Act prohibit any conveyances, deeds, grants or sales of state lands without reservations to all the people of the State of the mineral rights contained therein.

XVIII

The exchange of land as proposed by the Hammond Administration fails to effect land consolidations or to facilitate the management or development of the land as required by A.S. 38.95.060.

XIX

There is no adequate remedy at law for plaintiffs and the taxpayers and citizens of the State of Alaska to effect redress should this illegal conveyance take place. Damages would be astronomical for the replacement of the values of the coal, oil and gas reserves and resources. In any event, damages would have to come from the treasury of the State of Alaska, which consists of assets already owned by the people of the State. If this proposed exchange is not permanently enjoined, the plaintiffs and other citizens and taxpayers of the State of Alaska will suffer irreparable harm on the magnitude of billions of dollars in lost resources.

COUNT TWO

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

RAYMOND J. KESSETT
ATTORNEY AT LAW
837 WEST 5TH AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 276-4437

II

Article VIII, Sec. 9, Constitution of the State of Alaska, subject to the reservation to the State of all resources, allows the Legislature to provide for the sale or grant of state lands, or interests therein, and specifically allows for the establishment of sales procedures.

III

Pursuant to this constitutional authority, the Alaska Legislature in Sec. 38.05.045, Alaska Statutes, provided in part as follows:

> All lands owned in fee by the state or to which the state may become entitled, excepting tide, submerged or shorelands, and timber or grazing lands, may be sold as provided in §45-69 of this chapter.

IV

Sec. 38.05.055, Alaska Statutes, states in part as follows:

> Except as provided in §315(d) of this chapter, the sale shall be made at public auction to the highest qualified bidder as determined by the director.

Sec. 38.05.125 A.S. states that each contract for the sale lease or grant of state land, and each deed to state land, properties or interest in state land, made under Sec. 315-325 of this chapter or Sec. 45-120 of this chapter, . . . is subject to the reservation that the State of Alaska "expressly saves, excepts, and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind or description, ..."

VI

Sec. 38.05.310, Alaska Statutes, states that no land may be sold or leased for less than the approved, appraised market value.

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3rd AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-3477

VII

If Sec. 38.05.125, Alaska Statutes, providing for the reservation to the State of all mineral rights, is not in violation of Article VIII, Sec. 9, Constitution of Alaska, the reservation must apply to all authorized and legal state sales or grants in accordance with the contractual and compact provisions of Article VIII, Sec. 9, Constitution of Alaska and Sec. 6(i) of the Alaska Statehood Act. In this event, Sec. 38.95.060, Alaska Statutes, providing for the exchange of land with a native corporation would not be in accordance with the public auction and competitive bid requirements set forth in Sec. 38.05.045-120, Alaska Statutes.

VII

If the State is assuming for the purposes of the proposed exchange transaction that Sec. 38.95.060 (exchange provision) is outside the scope of the auction and competitive bidding provisions, and outside the reservation of mineral rights provisions, then Sec. 38.95.060 and Sec. 38.05.125 are in violation of Article VIII, Sec. 9 of the Alaska Constitution and the compact provisions between the Constitution and the Alaska Statehood Act. The proposed exchange is, therefore, illegal.

COUNT THREE

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.

II

Article VIII, Sec. 10 of the Constitution of the State of Alaska states as follows:

> No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

RAYMOND A. NESSETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0477

Although the State has conducted numerous hearings on the proposed land trade, the actual lands to be made the subject of the trade with the native corporation have not yet been determined. In accordance with Sec. 12(b) of the Amendments of ANCSA, and the "Terms and Conditions," the Cook Inlet region is allowed to select lands from various "pools." How much of the Beluga coal land and other lands now belonging and patented to the State will be selected from these "pools", and the exact location and value of such lands, still has yet to be determined and probably will not be determined until long after the Governor gives his consent.

III

The public notice requirements of Article VIII, Sec. 10 of the Alaska Constitution have not been complied with insofar as said provisions must require that notice not only be given of the exchange, but of the value and appraisals of the resources and surface rights contained therein, and the exact nature of the trade so as to give the public real notice of what is contemplated in terms of economic impact to the State Treasury now and in the future. Without these additional facts, notice is meaningless and ineffective.

IV

Article VIII, Section 10 also requires "other safeguards of the public interest as may be prescribed by law" as a part of a notice requirement prior to disposal of state lands. Plaintiffs allege that the terms of the proposed sale to this date remain indeterminate, indefinite, and of such an ambiguous nature that the public has received inadequate notice of the economic consequences of the proposed exchange. Even the legislature is unable to prescribe safeguards because it, like the plain-

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
Telephone (907) 272-3472

tiffs, has no exact knowledge of specific lands and resources involved. The proposed exchange, therefore, violates Article VIII, Section 10, Constitution of the State of Alaska.

COUNT FOUR

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.

II

Article VIII, Section 17, Constitution of the State of Alaska, provides as follows:

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

III

Plaintiffs allege that the proposed land trade involving the Cook Inlet region violates Article VIII, Section 17 of the Alaska Constitution in that the trade or exchange will result in valuable state resources being conveyed to a private corporation for less than fair value and for the use and benefit of less than all citizens of the State of Alaska.

IV

The purported and invalid attempt on the part of Congress to waive provisions of the Alaska Statehood Act, requiring reservations of all minerals for the benefit of all citizens of the State, and the purported and invalid attempt of the State to convey the mineral rights underlying state lands in violation of the State Constitution, results in the application of federal and state law which is not uniform and which does not apply to all citizens of the State equally. The State through the proposed exchange is violating the intent and purpose of Article VIII, Section 17, Constitution of the State of Alaska.

RAYMOND A. NEESETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0377

COUNT FIVE

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.

II

Sec. 38.95.060, Alaska Statutes, providing for the exchange of state lands with lands owned by the regional corporation, cannot and does not purport to amend, change or waive the provisions of Article VIII, Sec. 9 of the Alaska Constitution and Sec. 6(i) of the Alaska Statehood Act, both of which require that all deeds or grants of state lands reserve to the State all mineral rights contained therein.

III

The purported land exchange between the State and the Cook Inlet Region, in addition to conveying subsurface mineral rights in violation of Article VIII, Sec. 9 of the Alaska Constitution and Sec. 6(i) of the Statehood Act, is also in excess of the authority set forth in Sec. 38.95.060, Alaska Statutes, which does not in any manner refer to subsurface mineral rights as a part of the exchange.

COUNT SIX

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 6(i) of the Alaska Statehood Act in conjunction with Article VIII, Section 9 of the Alaska Constitution created a compact which thereafter and until amended according to law, guaranteed to all the people of the State of Alaska that the mineral resources of the State would be retained by the State and its citizens. The grant of lands from the federal government

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0677

to the State was expressly conditioned upon the State preserving the mineral rights for all its citizens, and the State cannot now legally, without a proper vote of the people as required to amend the Alaska Constitution, convey said mineral rights and thereby bestow a special benefit on any person or corporation, public or private, at the expense of the citizens of Alaska.

III

The Alaska Statehood Act and the Alaska Constitution place the State in the position of trustee over the mineral resources of the citizens of the State, and the State cannot now legally abdicate its duty as trustee without the consent of its citizens any more than it could abdicate its police powers and duty to protect persons and their property.

COUNT ~~SIX~~ SEVEN

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 38.95.060, Alaska Statutes, providing for the exchange of land, states that a corporation organized under Alaska law pursuant to the federal Alaska Native Claims Settlement Act may obtain "up to 23,040 acres of state land."

III

The purported land exchange between the State and the Cook Inlet Region purports to grant far in excess of 23,040 acres of state land; to the contrary, the proposed exchange would involve over 400,000 acres. Therefore, even if Sec. 38.95.060, Alaska Statutes, is a valid delegation of legislative authority to the Governor, the proposed exchange is not within the limitations imposed by this section.

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0477

Actually 495,360 acres of state patented lan

COUNT ~~SEVEN~~ EIGHT

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 38.95.060, Alaska Statutes, states as follows:

> (c) Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged.

III

The proposed exchange of lands between the State and Cook Inlet region are not based upon equal value. The State has not conducted adequate appraisals of the coal and other natural resources underlying the lands attempted to be exchanged in this transaction, and the State is proposing to give away coal resources which ultimately may be of more value and benefit to the State of Alaska than the resources underlying the Prudhoe Bay oil fields.

IV

The State is attempting to exchange state lands involving enormous coal resources in exchange for lands which, although useful for park and recreational purposes, contain little inherent value. Sec. 38.95.060(c) incorporates the concept of "cash" in equalizing values, and the actual monetary benefits and disadvantages should be the primary factor in determining equality in this proposed exchange. Although park and recreational lands do have value to the State, the enormity and magnitude of the economic value and benefit to the State of its mineral rights far outweigh any assertion on the part of the State that the proposed exchange is on the basis of equal value.

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3rd AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-3427

COUNT ~~EIGHT~~ NINE

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

Sec. 17 of the Amendments to the Alaska Native Claims Settlement Act, which purports to allow the State to convey its lands in conjunction with the Cook Inlet Region settlement free of the restrictions of Sec. 6(i) of the Alaska Statehood Act, is a unilateral attempt on the part of the Congress to waive and amend the compact provisions of the Statehood Act in order to obtain state lands and their underlying mineral rights for the sole purpose of effecting a federal settlement with the natives of Alaska.

III

The purported attempt of Congress in Sec. 17, to authorize the disposal of state lands contrary to the Alaska Statehood Act and the Alaska Constitution, is in violation of the Supremacy Clause of the Constitution of the United States. This clause declares that the laws of the United States shall be the supreme law of the land, but also directly limits the supremacy to that area solely within the sphere of lawful federal power and that area not reserved to the states by the Tenth Amendment.

IV

Amendment X of the Constitution of the United States specifically states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." The federal government, through its Congress, does not possess the constitutional authority to enact Sec. 17 of the Amendments,

RAYMOND A. NESBETT
ATTORNEY AT LAW
437 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0477

which is nothing more than an attempt to control the power or authority of the State of Alaska concerning the dispositions of its own lands. Congress determined in the Statehood Act the circumstances under which the State of Alaska would be admitted into the Union, but this did not and does not give Congress any power to change or modify, either directly or indirectly, the provisions of the Constitution of the State of Alaska.

VI

By the enactment of Sec. 17 of the Amendments, the Congress of the United States is violating the compact provisions of the Statehood Act which provide that upon the issuance of the proclamation of the President, the State of Alaska "is hereby declared to be a State of the United States of America, is declared admitted into the Union on an equal footing with the other states in all respects whatever, ..."

VII

Should the attempt of Congress pursuant to Sec. 17 of the Amendments be construed to be a valid exercise of federal authority concerning state lands, the State of Alaska would, in effect, be denied admission into the Union on equal footing. Any such attempt is, therefore, in violation of federal law.

COUNT ~~NINE~~ TEN

I

Plaintiffs reallege Paragraph I through XIX of their First Count herein.

II

Sec. 38.95.060 providing for the exchange of land with a native corporation, states that "with the consent of the governor, a corporation . . . may obtain up to 23,040 acres

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501

of this land, if it has not been disposed of or developed, by exchanging land or interest in land with the State." This section further states that exchanges shall be on a basis of equal value.

III

The legislative delegation of authority to approve of exchanges of land granted to the governor pursuant to the above-cited statute is an unconstitutional and invalid delegation of legislative authority by virtue of insufficient standards, rules and regulations to govern the sale and exchange transaction contemplated therein.

IV

Sec. 38.05.035, Alaska Statutes, states that the Director of the Division of Lands shall " . . . (2) manage, inspect and control state lands and improvements on them belonging to the State and under the jurisdiction of the division;" . . . . The same section states that the Director shall" . . . (7) have jurisdiction over state lands . . . and shall perform the duties necessary to protect the state's rights and interest in state lands, including the taking of all necessary action to protect and enforce the state's contractual or other property rights; . . . . "

V

Sec. 38.05.035, Alaska Statutes, further states that the power of the Director of the Division of Lands authorizes him . . . "(14) when he finds that the interest of the state will be best served, he may, with the consent of the commissioner, approve contracts for the sale, lease, or other disposal of available lands, resources, property or interest in them, . . . and no contract for the sale, lease, or other disposal of available lands or interest in them, is legally binding on the

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501

State until the commissioner formally records his consent to the contract; . . . . "

VI

Article VIII, Section 9, Constitution of the State of Alaska, authorizes the legislature to provide for the sale or grant of state lands, and establish sales procedures. Pursuant thereto the Alaska legislature delegated to the Department of Natural Resources, its Commissioner, and the Director of the Division of Lands the duty of making findings and determinations relating to the best interests and welfare of the State of Alaska. The legislature established sale procedures for the sale of state lands in Section 38.05.045 et seq.

VII

By virtue of Section 38.95.060, Alaska Statutes, the legislature is attempting to delegate the decision of making a land exchange concerning valuable state resources not to an administrative agency, but to the Governor, a single employee of the executive branch, contrary to the established sale procedures, regulations and statutes which give exclusive jurisdiction over the sale and disposal of state lands to the Director of the Division of Lands and the Commissioner of Natural Resources. There are no standards set forth in the exchange provisions governing the appraisal and determination of equal values, and there is not even a requirement that the consent of the governor be withheld until the exact lands involved have been identified and the exact appraisal and valuation of the exchange is made definite.

VIII

The legislature in Section 38.95.060, Alaska Statutes, is, pursuant to invalid federal legislation, attempting illegally

RAYMOND A. NESBETT
ATTORNEY AT LAW
637 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0477

to give away irreplaceable natural resources at the sole discretion of the Governor, thereby divesting the Division of Lands and its Director of its constitutional and statutory power to control and manage state lands through established procedures.

COUNT ~~THE~~ ELEVEN

I

Plaintiffs reallege Paragraphs I through XIX of their First Count herein.

II

The proposed exchange attempts, through federal legislation to unilaterally waive or amend the Alaska Statehood Act; subverts the jurisdiction of the Division of Lands; disposes of lands without established and appropriate sale procedures; and denies the citizens of the State of Alaska the protection of Article VIII, Section 9 of their Constitution and its compact with the federal government pursuant to Section 6(i) of the Statehood Act. For these reasons the proposed exchange and its implementing legislation deprive plaintiffs and the citizens of the State of Alaska of their property and resources without due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, and Article I, Section 7 of the Constitution of the State of Alaska. Further, the proposed exchange denies the citizens of Alaska of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 1, Alaska Constitution.

WHEREFORE, plaintiffs on their own behalf and on behalf of all of the citizens of the State of Alaska, pray for an order of this court granting them judgment declaring that the

RAYMOND A. NESSETT
ATTORNEY AT LAW
637 WEST 3rd AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-3472

proposed exchange of land between the State of Alaska and the Cook Inlet Region, Inc. be declared illegal as in contravention and in violation of the Federal and State Constitutions, and the applicable Alaska Statutes; further,

Plaintiffs pray for judgment permanently enjoining defendants, their agents and employees, from consenting to, implementing, negotiating, or in any manner conveying or attempting to convey any of the lands and mineral rights as contemplated in Section 12 of the Amendments to the Alaska Native Claims Settlement Act; and further,

For judgment awarding plaintiffs their costs and attorney fees for protecting their interests and the interests of all citizens of the State of Alaska.

DATED at Anchorage, Alaska this 15th day of March, 1976.

RAYMOND A. NESBETT
Attorney for Plaintiffs

STATE OF ALASKA)
) ss:
THIRD JUDICIAL DISTRICT)

J. R. LEWIS and HAROLD H. GALLIETT, JR., being first duly sworn on oath, depose and say:

That they are the plaintiffs in the above-entitled action; that they have read the foregoing Complaint, know the contents thereof and believe the same to be true.

J. R. LEWIS

HAROLD H. GALLIETT, JR.

SUBSCRIBED AND SWORN to before me this 15th day of March, 1976.

Notary Public in and for Alaska
My Commission Expires: 2-18-77

RAYMOND A. NESBETT
ATTORNEY AT LAW
837 WEST 3RD AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-0477

(e) The extremely valuable patented state lands which these top officials are attempting to exchange for unconscionably less valuable lands, are as follows:

(1) POINT MACKENZIE POOL - An unspecified 3,200 acres of land, together with mineral estate. This land could include uniquely-valuable, Point Mackenzie port lands or enormously-valuable lands containing an estimated 550 million tons of coal between the surface and a depth of 2,000 feet, as estimated from oil well logs.

(2) KNIK-WILLOW POOL - An unspecified 4,480 acres of land, including mineral estate. This land could include enormously-valuable coal lands containing an estimated 770 million tons of coal between the surface and a depth of 2,000 feet, as estimated from oil well logs.

(3) KASHWITNA POOL - An unspecified 38,400 acres of land, together with mineral estate. This land could include valuable home and agricultural land, for which Alaskans and outside speculators alike have competed to purchase at rapidly escalating prices.

(4) CHICKALOON POOL - An unspecified 4,800 acres of land, including mineral estate. This land could include extremely-valuable coal lands containing large reserves of bituminous coal. Some of this coal is of high-priced, coking-quality, as determined from U. S. Geological Survey and U. S.

Bureau of Mines investigations.

(5) KENAI POOL - An unspecified area of at least 115,200 acres - and possibly much more acreage, depending on as yet uncertain Native village corporation entitlement - together with mineral estate. This land could include enormously-valuable coal lands containing about 20 billion tons of coal between the surface and a depth of 2,000 feet, as estimated from oil well logs and surface outcrop data.

(6) BELUGA POOL - An unspecified area of 13½ townships (311,040 acres), including mineral estate. This land is to be selected by the Cook Inlet Region, Inc., from a larger area consisting of 16 townships (368,640 acres), after possible selection of one township of surface estate by the Tyonek village corporation. The attempted land exchange permits the Cook Inlet Region, Inc., to select the most valuable lands in the pool. Under the terms of the attempted exchange, enormously-valuable patented state coal lands will be granted by the state. The most valuable coal lands in this pool contain about 26 billion tons of coal between the surface and a depth of 2,000 feet, as estimated from nearby oil well logs, surface outcrop data and geophysical surveys.

3. VALUE OF COAL WHICH MAY BE LOST TO THE STATE

(a) I estimate eventual recovery of 50 percent of the coal estimated above.

(b) I estimate the present mean effective state coal royalty in said pools to be 20 cents per ton.

(c) In making my estimate of future state coal royalty income from lands which may be lost, I first estimate that no significant reduction of the estimated resource will occur in the next 20 years as a result of mining. Second, I estimate inflation henceforth at 6 percent per annum, compounded annually. Third, I estimate a real increase in the value of coal due to improvements in technology and increased demand, at 3 percent per annum, compounded annually. Fourth, I estimate that the royalty paid to the state for coal will be changed by law to a percentage of pit head price, and that this percentage of pit head price will become fully effective within 20 years from the date hereof. Fifth, I estimate that the overall escalation factor to be applied to state coal royalties will be 9 percent per annum, compounded annually.

(d) In making my estimate of the present value of future state coal royalty income from lands which may be lost, I first estimate that interest charged the state for bond funds will be 6 percent per annum. Second, I estimate that the required marginal utility of state bond funds above interest cost, will be 50 percent of interest cost. Therefore, I estimate that the overall discount factor to be applied to determine the discounted present value of future state coal royalty income from lands which may be lost, will be 9 percent per annum.

(e) Therefore, I calculate that the escalation factor offsets the discount factor, and that my estimate of the present mean effective state coal royalty may be applied to recoverable coal to compute the present value of future state coal royalty income from lands which may be lost.

(f) Thus, the estimated present value of only a part of the coal which may be lost by the state in this attempted land exchange, is as follows:

(1) POINT MACKENZIE POOL

550,000,000 Tons		
X 50% Recovery		
X 20¢/Ton Royalty	=	$55,00 ,000

(2) KNIK-WILLOW POOL

770,000,000 Tons		
X 50% Recovery		
X 20¢/Ton	=	77,00 ,000

(3) KENAI POOL

20,000,000,00 Tons		
X 50% Recovery		
X 20¢/Ton	=	2,000,00 ,000

(4) BELUGA POOL

26,000,000,00 Tons		
X 50% Recovery		
X 20¢/Ton	=	2,600,00 ,000

(5) PRESENT VALUE OF COAL WHICH MAY BE LOST BY THE STATE $4,732,00 ,000

(g) The complex Chickaloon coalfields contain large resources of bituminous coal which could be estimated, if need be.

(h) The quantities of coal in the attempted exchange lands below a depth of 2,000 feet are larger than the quantities of coal above a depth of 2,000 feet. These resources could be estimated, if need be, and many mines could be cited which recovered coal as early as 1910 from depths greater than 2,000 feet.

(i) The estimated quantities of coal in the lands to be lost by the state from the Beluga Pool are conservative. These estimated quantities amount to about 2.5 percent of the volume of tertiary sedimentary rocks to a depth of 2,000 feet in the possible Beluga Pool exchange area. The average percentage of coal in nearby tertiary sedimentary rocks, as determined by interpretation of suites of oil well logs, is about 7.8 percent.

4. VALUE OF OIL AND GAS WHICH MAY BE LOST TO THE STATE

(a) The Beluga tertiary basin, much of which is in the attempted exchange lands, has recently, as a result of gravity geophysical work, been recognized as having sufficient depth of sedimentary rocks to offer good possibilities for oil and gas discoveries.

(b) At the Beluga River gas field, drilling by Standard Oil Company of California of three stepout wells has resulted in increasing the probable reserves of this field from 500 billion cubic feet to one trillion cubic feet. Parts of the

Beluga River gas field are excluded from the attempted land exchange. But, continuation of planned stepout drilling is likely to extend this gas field out into the lands attempted to be exchanged.

(c) Ten miles northeast of the Beluga gas field, Cities Service Oil Company and Pacific Lighting Corporation have very recently discovered a gas field estimated to hold one trillion cubic feet of gas. Similar discoveries are likely in the attempted exchange lands.

(d) Gas discoveries in the amount of one trillion cubic feet in the attempted exchange lands would yield about 125,000,000 MCF of in-kind royalty gas to the State of Alaska. I follow the same rationale for estimating present value of future gas income as has been given above for coal royalties. Using a present gas sale price of 50 cents per MCF, gas discoveries in the amount of one trillion cubic feet in the attempted exchange lands would have a present value to the state of $62,500,000.

(e) Yet, the state has thus far assigned no value to the great oil and gas potential in the attempted exchange lands.

5. VALUE OF SURFACE ESTATE WHICH MAY BE LOST BY THE STATE

(a) The present value of surface estate which may be lost by the state in the attempted land exchange is estimated as follows, using the same present value rationale as for coal:

(1) POINT MACKENZIE POOL

3,200 Acres
X $10,000
Per Acre = $32,000,000

(2) KNIK-WILLOW POOL

8,320 Acres
X $2,000
Per Acre = 16,640,000

(3) KASHWITNA POOL

38,400 Acres
X $1,000
Per Acre = 38,400,000

(4) CHICKALOON POOL

5,730 Acres
X $500
Per Acre = 2,865,000

(5) ALEXANDER CREEK

4,560 Acres
X $500
Per Acre = 2,280,000

(6) SALAMATOF

5,945 Acres
X $1,000
Per Acre = 5,945,000

(7) KENAI PENINSULA

117,315 Acres
X $1,000
Per Acre = 117,315,000

(8) BELUGA POOL

11,520 Acres
Port &
Industrial
Site X
$10,000
Per Acre = 115,200,00

5,760 Acres
Townsite
X $10,000
Per Acre = 57,600,00

316,800 Acres
Coal Surface
X $200 Per
Acre = $63,360,000

(9) PRESENT VALUE OF SURFACE ESTATE WHICH MAY BE LOST BY THE STATE $451,[illegible],000

(b) The theory used by state officials in valuation of surface estate has been that all surface estate must be valued as though put on the market at once. Such a one-time sale would yield prices much less than would be realized by spreading sales over a period of years.

(c) My estimates above are based on sales at continuously escalating land prices, over a long period of years. I estimate that the escalation factor for land prices offsets the discount factor derived from the interest cost and required marginal utility of state bond funds.

6. VALUE OF SURFACE ESTATE WHICH MAY BE RECEIVED BY THE STATE

(a) The present value of surface estate which may be received by the state in the attempted land exchange is estimated as follows:

(1) KUSKOKWIM, HOLCHAINA & KOKSETNA DRAINAGES

587,520 Acres
X $40 Per
Acre = $23,500,000

(2) TALKEETNA MOUNTAINS, KANISHAK BAY & TUTNA LAKE AREAS

596,480 Acres
X $60 Per
Acre = 35,788,800

2,560 Acres,
Chenik Port
Site, X
$5,000
Per Acre = 12,800,000

(3) CAMPBELL AIRSTRIP TRACT

4,120 Acres
X $20,000
per Acre = 82,400,000

(4) TALKEETNA MOUNTAINS & KOKSETNA DRAINAGE

285,696 Acres
Selection Rights
Only,
Discretionary
With Secretary
of the Interior,
X $40 Per Acre = 11,427,840

(5) PRESENT VALUE OF SURFACE ESTATE WHICH MAY BE RECEIVED BY STATE $165,917,440

7. SUMMARY OF ATTEMPTED EXCHANGE VALUES

(a) The following is my summary of estimated values which the state may lose in the attempted land exchange:

(1)	PRESENT VALUE OF COAL	$4,732,000,000
(2)	MINIMUM PROBABLE PRESENT VALUE OF OIL & GAS	62,500,000
(3)	PRESENT VALUE OF SURFACE ESTATE	451,605,000
		$5,246,105,000

(b) The following is my summary of estimated value which the state may receive in the attempted land exchange:

(1)	PRESENT VALUE OF SURFACE ESTATE	$165,917,440

(c) From this summary, the net loss to Alaska citizens is as follows:

$5,080,187,560

8. LAND CONSOLIDATION AND FACILITATION OF MANAGEMENT OR DEVELOPMENT OF THE LAND

(a) The attempted land exchange will destroy the compact integrity of patented state lands in the heartland of our state. State lands will be broken up, not consolidated.

(b) The attempted land exchange will create conflict of land management where none existed or could exist before.

(c) The attempted land exchange discourages settlement on the land by all citizens equally, except as leasehold tenants on terms dictated by Native corporations.

(d) The attempted land exchange denies Alaska citizens responsible state environmental and economic control in the public interest of an empire of coal on the threshold of development.

(e) The attempted land exchange makes inadequate provision for rights-of-way to and from state lands, across lands which may be lost by the state.

(f) The attempted land exchange could result in the loss to the state of the critical deep-water port and industrial site at Beluga. This site is essential to the future processing and shipment of not only Beluga coal, but also Susitna coal, Matanuska coal, Nenana coal, and other future exports from the Interior and North Slope. The hinterland of this port will be as large as Texas. The result of selection of the Beluga surface estate by the Tyonek village corporation, as provided for in the attempted land exchange, will be to create a virtual monopoly of natural resources port sites on the northwest shore of Cook Inlet in this one, narrowly-based, profit-making corporation.

9. EQUAL VALUE

(a) There is no way to assure equal value in the attempted land exchange. No cash payment to equalize values attempted to be exchanged is authorized under the pertinent federal act. The major values are mineral values. Not enough testing with the drill has been done, and there is not enough time to drill and report and evaluate under the fixed terms and conditions of the importunate federal act.

(b) It is impossible to determine most of the values which will be exchanged in the short time which has been allowed by the federal act. Alaska citizens are denied a map showing the exact patented state lands which will be lost. Alaska citizens are denied a legal description of the specific lands

From The Desk Of:

Dale P. Tubbs

2/18/76

Senator Ray Poland

Enclosed are my comments made at the Cook Inlet Land Exchange hearing. Also enclosed are copies for your comm. the members

Dale P. Tubbs

Deputy Director, Alaska Division Of Lands

02-001B

STATE of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS

TO: The Honorable Kay Poland
Chairman, Senate Resources Committee
and the Honorable Nels Anderson
Chairman, House Resources Committee

DATE : February 11, 1976

SUBJECT: Cook Inlet Land Exchange Agreement

The following is the substance and comments made at the Joint Senate and House Resources Committee hearing by myself regarding the Cook Inlet land exchange on February 11, 1976.

I am the Deputy Director of the Alaska Division of Lands, Department of Natural Resources. My involvement in the Cook Inlet land exchange has been minimal. My first involvement was during the 1st half of 1975 to identify some of the resources in the general area of Beluga Lake and the Mt. Susitna. On not more than three or four other occasions was I asked for general type information. At no time was there group staff review by the professionals within the division to discuss and evaluate the negotiations that took place. This is a reason for the conflicting testimony you have been receiving. No questions were posed to the Division of Lands staff to obtain professional opinioned comments regarding the merits of the negotiations.

My concern, questions and observations of the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area as follows. There may be answers to some of them, however without the benefit of staff discussion, they remain as questions in my mind.

1. Congress has voided out the requirement for the state to retain the mineral estate when land exchanges are involved. With this being so, then why go through the exercise of conveying title to the Bureau of Land Management for reconveyance to the CIRI or the villages?

2. Even though Congress has voided the requirement to retain the mineral estate, Alaska Statute 38.05.125 requires that all leases, sales or grants of state land contain a specific mineral reservation (see attachment).

3. Under what authority is this exchange being consumated? Is it broad powers of the Commissioner AS 38.05.020; the broad powers of the director AS 38.05.035 or the provision for exchange of native lands AS 38.95? Regardless of which authority, was it the intent of the legislature to allow exchanges of this size to be consumated without a mineral reservation?

4. With Congress changing the mineral condition of the Statehood Act, is a ratification vote by the Alaskan voters necessary?

5. It is my understanding that the Department of Interior has appealed the decision as to the eligibility of some of the villages involved in this agreement. Isn't it premature at this time to convey lands until this is resolved?

6. D2 lands identified in Section III of the Cook Inlet Trade are

being conveyed to the State to protect fish and game values. Wouldn't the D2 classification provide the same protection? In the event the land did not get put into the D2 status, the lands would still be selectable by the State.

7. If the trade is desirable maybe the State should wait for the CIRI to get title to their lands, and then make a 2-way, rather than a 3-way exchange. This way the State would acquire only what it really needs.

8. The land the State is to receive in the Kamishak Bay area does not include the existing overland route to Lake Illiamna. I am not aware of the significance of State ownership to these mountainous lands, a R/W would probably be sufficient.

9. Does this agreement void out the requirement that the region must select the odd - odd - even - even townships in the 11(a)(1) withdrawal for the Chickaloon area? The agreement in Section IV states that these conveyances constitute CIRI full entitlement. This is a Bureau of Land Management problem.

10. From Bureau of Land Management concerns, I do not believe there are any valid 12(a) selections in the Talkeetna Mountain area where 4.5 townships of 12(b) selections are to be made available. Or does this agreement validate what the Bureau of Land Management considers to be invalid selections in that area? This again is a Bureau of Land Management problem.

11. It appears that the CIRI selection process can extend up to May 18, 1979.

12. Does this agreement really consolidate land ownership patterns for which the state is trying to accomplish?

13. Appendix C-3 identifies lands in an amount equal to 1/4 of the acreage entitlements. Is this acreage pool in addition to the five acreage pools identified in Appendix C-1 A thru E?

14. Do acreage entitlements under these terms and conditions conflict with the out-of-court settlement agreement between the Secretary and the Governor dated September 1, 1971? Is so what prevails?

15. Even though the State receives 2.5 times the acreage it is giving up, is it an equal value deal for the State?

16. How do we arrive at equal values? Is it possible to determine dollar values when such large acreage are involved and the subsurface minerals are unknown? Did the legislature intend that exchanges of this magnitude not include a documented formal appraisal?

17. A selection pool for CIRI is to be made up from federal surplus property, power sites and other reserves with certain exclusions.

But how about if the Eagle River Powersite withdrawal was included? These lands lie within the Chugach State Park boundary. The State would like to have the opportunity to include these lands in the State Park. There are other withdrawals that have simular impacts.

18. Federal lands at Point Woronzof, Point Campbell, Goose Lake and Campbell Tract are to be reserved by the United States for early conveyance to the State for park and recreation purposes. (See attached). This would then include the lands necessary for expansion of the North-South runway at Anchorage International Airport. Would the park and recreation restriction then preclude construction of this runway? Enlargement of the sewage treatment plant may also be effected. These lands are within 2 miles of the Anchorage City limits and would not have been selectable by CIRI regardless of the exchange agreement.

19. There is a surveyed school section 36 within the Campbell Tract. If this Section is conveyed under the Recreation and Public Purposes Act, is the Permanent School Endowment Fund precluded from revenues from what was originally authorized? If this removes the School Section identity, then the States appeal to the Interior Board of Land Appeals may be weakened regarding the school sections within the Tongass National Forest that have been selected by some of the Southeast native villages.

20. I have represented the State in working on a land use plan for the Campbell Tract. This process has been continuing for the last 10 months. Conveyance of the Tract under the Recreation and Public Purposes Act will serve the public interest as long as the Far North Bicentennial Park master development plan remains flexible enough to provide for revisions to meet the community needs. In all probability these lands would have remained available for state selection.

21. The Attorney Generals office has on different occasions provided the Division of Lands with opinions regarding the transfer of state land. Regardless of the granting authority, the processes of AS 38.05 pertaining to review and discussion (AS 38.05.305), appraisal (AS 38.05.310), public notice (AS 38.05.345) and the mineral reservation (AS 38.05.125) are required. If the State legislature is going to approve this land exchange, it would be most expedient if remedial legislation could be included to void the necessity of these actions for the instance. It seems nonsensical to me if we must review and discuss the land parcels to conveyed to the Bureau of Land Management if the local planning authorities do not have a veto power. The same question can be raised in regard to appraisal. If the legislature determines this is an equal value exchange, why perform an appraisal. Compounding the appraisal problem is the impossibility to determine the fair market value of large blocks of land or the mineral estate value of unknown mineral quantities. Public Notice as required in AS 38.05.345 will also serve little purpose if the legislative directive is to exchange the land. In order to clear the hurdle involving the mineral reservation legislative relief is required.

appropriation, funds necessary to carry out its functions under this section. (§ 4 ch 70 SLA 1972)

Editor's note. — Prior to the 1973 relocation of this chapter, this section appeared as AS 38.15.050.

Section 1, ch. 70, SLA 1972, provides: "Purpose. It is the purpose of this Act to implement the Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688; 43 U.S.C. 1601 et seq.) by amending state law to resolve those ambiguities, conflicts and problems directly or impliedly created by the enactment by Congress of the Alaska Native Claims Settlement Act. It is also the purpose of this Act to complement through state policy, in a reasonable and fair manner, the federal policy expressed in that Act."

Legislative committee report.—For report on ch. 70, SLA 1972 (CSHB 731), see 1972 House Journal, p. 837.

Sec. 38.95.060. Exchange of land. (a) With the consent of the governor, a corporation organized under Alaska law pursuant to the federal Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688; 43 U.S.C. 1601 et seq.) which would otherwise be entitled to select land within the area withdrawn by sec. 11(a)(1)(A) and (B) of the federal Act, which, however, has been selected by and patented to the state before December 18, 1971, may obtain up to 23,040 acres of this land, if it has not been disposed of or developed, by exchanging land or interests in land with the state.

(b) An individual Native (as defined in the federal Act) or a corporation referred to in (a) of this section may exchange land or an interest in land with any other individual Native or corporation referred to in (a) of this section or the state for the purpose of effecting land consolidations or to facilitate the management or development of the land.

(c) Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the properties exchanged. (§ 4 ch 70 SLA 1972)

Editor's note. — Prior to the 1973 relocation of this chapter, this section appeared as AS 38.15.060.

Legislative committee report.— For report on ch. 70, SLA 1972 (CSHB 731), see 1972 House Journal, p. 837.

January 15, 1978, to create a selection pool which shall consist of all the following lands, within the exterior boundaries of the Cook Inlet Region, now in existence or hereafter coming into existence by January 15, 1978:

(i) abandoned or unperfected public land entries, provided however, that the United States shall not be obligated to initiate any adversary proceedings other than an adjudication by the BLM to determine if such entries are abandoned or unperfected, and the burden of identifying such lands shall be on CIRI;

(ii) federal surplus property;

(iii) revoked federal reserves;

(iv) cancelled or revoked power site reserves, with the exception of the Bradley Lake reserve, reserves in the Lake Clark proposal, and the Chakachamna Lake reserve, if any are ever cancelled or revoked;

(v) public lands created by the reduction of federal installations as defined in Section 3(e) of ANCSA, except that, if such lands are within a Section 11(a)(1) withdrawal area, they shall be subject to prior Village Corporation selections properly filed prior to December 18, 1975; and

(vi) any other federal lands as agreed by the State the Region and the Secretary, including but not limited to lands withdrawn under Section 17(d)(1) of ANCSA and not withdrawn for any other purpose.

The Secretary shall notify CIRI after any above-described lands have been placed in the pool. With the concurrence of CIRI, the State and any other concurrence that may be required under paragraph I-C(1)(e) of this Document, the Secretary may, in his discretion, contribute to such pool properties of one or more of the foregoing categories from without the boundaries of the Cook Inlet Region, provided that properties described in subparagraphs (2)(a)(ii) and (2)(a)(iii) of this paragraph shall be removed from the pool if not selected by CIRI within 90 days after the Secretary notifies CIRI that such properties have been placed in the pool or valued by the Secretary in Subparagraph 2(c) of this document whichever date is later.

The State shall be advised of all properties located within the exterior boundaries of Cook Inlet Region to be placed in the pool described in subparagraph 2(a) and may require Secretarial consultation with the Joint Land Use Planning Commission with respect to any specific piece of property so included, except those in subparagraph 2(a)(i) hereof, to determine whether private ownership of such property would be incompatible with reasonable land-management principles; provided, that the Secretary shall not be bound by any recommendation of the Joint Land Use Planning Commission. The Secretary shall notify the State, CIRI and the Commission of his decision in writing. The State may conclusively object to the inclusion in the pool of up to 1,500 of the acres, described in paragraph 2(a)(i) and 2(a)(iv), and additional lands within these two categories may be excluded from the pool upon replacement by the State with lands of equal values. Lands not included in the pool as result of the State's conclusive objection or which have been replaced by the State under this subparagraph shall, immediately upon their exclusion or replacement from the pool thereby, be made available by the Secretary to the State for selection under the Alaska Statehood Act for a period of 90 days to the exclusion of all competing claims or parties.

(c) Unless specifically excepted by the Secretary, all tracts of land and improvements thereto in said pool shall be appraised by one or more appraisers mutually agreeable to CIRI and the Secretary.

(d) CIRI shall be entitled to select any tract of land from said pool in exchange for its out-of-Region selection rights, in part or in whole and *pro tanto*, in satisfaction thereof, in the following manner:

(1) any tract of land and improvements thereto specifically excepted from appraisal by the Secretary as described in subparagraph (c) of this paragraph may be exchanged acre for acre;

(2) any tract of land and improvements thereto valued by CIRI and the Secretary, after review of the appraisals, at less than $500 per acre at fair market value may be exchanged acre for acre;

(3) any tract of land and improvements thereto valued by CIRI and the Secretary, after review of the appraisals, at $500 per acre or more at fair market value shall be exchanged as follows:

(i) for each acre of land in said tract, each valued increment of $500 or proportion thereof shall be considered an acre of land or proportion thereof, in the same proportion, hereinafter called an "acre/equivalent"; and

(ii) any acre/equivalents may be exchanged for any acres of CIRI's out-of-region entitlement.

(e) Anything in the foregoing provisions notwithstanding, the selection pool created hereunder shall not include or affect lands within the Point Woronzof, Point Campbell, Goose Lake, and Campbell tracts, to which CIRI waives any claim which it may have had; and such lands shall be reserved by the United States for early conveyance to the State for park and recreation purposes as an integral part of the consideration for this Document.

(f) The Secretary shall utilize his best efforts to maximize the pool through the use of all available properties within the described categories in order to enhance the opportunity for the land exchanges described herein. If, by January 15, 1978, the Secretary and the General Services Administrator have not identified for the pool at least 138,240 acres, or acre/equivalents of lands within the exterior boundaries of Cook Inlet Region, the Secretary shall add to the pool an amount equal to the difference between 138,240 acres, or acre/equivalents, and the number of acres so identified from the following:

(1) with the consent of the State, lands located within the boundaries of the Region, withdrawn for the purposes of section 17(d)(1) of ANCSA, and valued by the Secretary and CIRI at $200 per acre, or more.

(2) with the consent of the State and CIRI, lands described in subparagraph I-C(2)(a) of this Document from without the exterior boundaries of Cook Inlet Region.

CIRI must select all lands in the pool located within the Region which are valued by the Secretary and CIRI at $200 per acre, or more, until CIRI has selected 138,240 acres, or acre/equivalents as described in subparagraph 3(i) of this paragraph.

57-000—76——6

BLM Alaska

February 9, 1976

Briefing Statement

CAMPBELL TRACT AS AFFECTED BY

PUBLIC LAW 94-204

The Act of January 2, 1976 (PL 94-204), an amendment to ANCSA, has the following effects on Campbell Tract.

1. After ratification of the Act by the Alaska State Legislature, the Campbell Tract lands can transfer to the State of Alaska, but not before December 18, 1976.

2. The lands will transfer under the procedures of the Recreation and Public Purposes Act (44 Stat. 741) without consideration for the 640 acre limit, and must be used for public parks, recreation, and public purposes.

3. Use and development will be in accordance with the "Generalized Land Use Plan" as outlined in the September 1974 Greater Anchorage Area Borough Far North Bicentennial Park Master Plan.

4. BLM may reserve up to 1000 acres within the Tract for present needs.

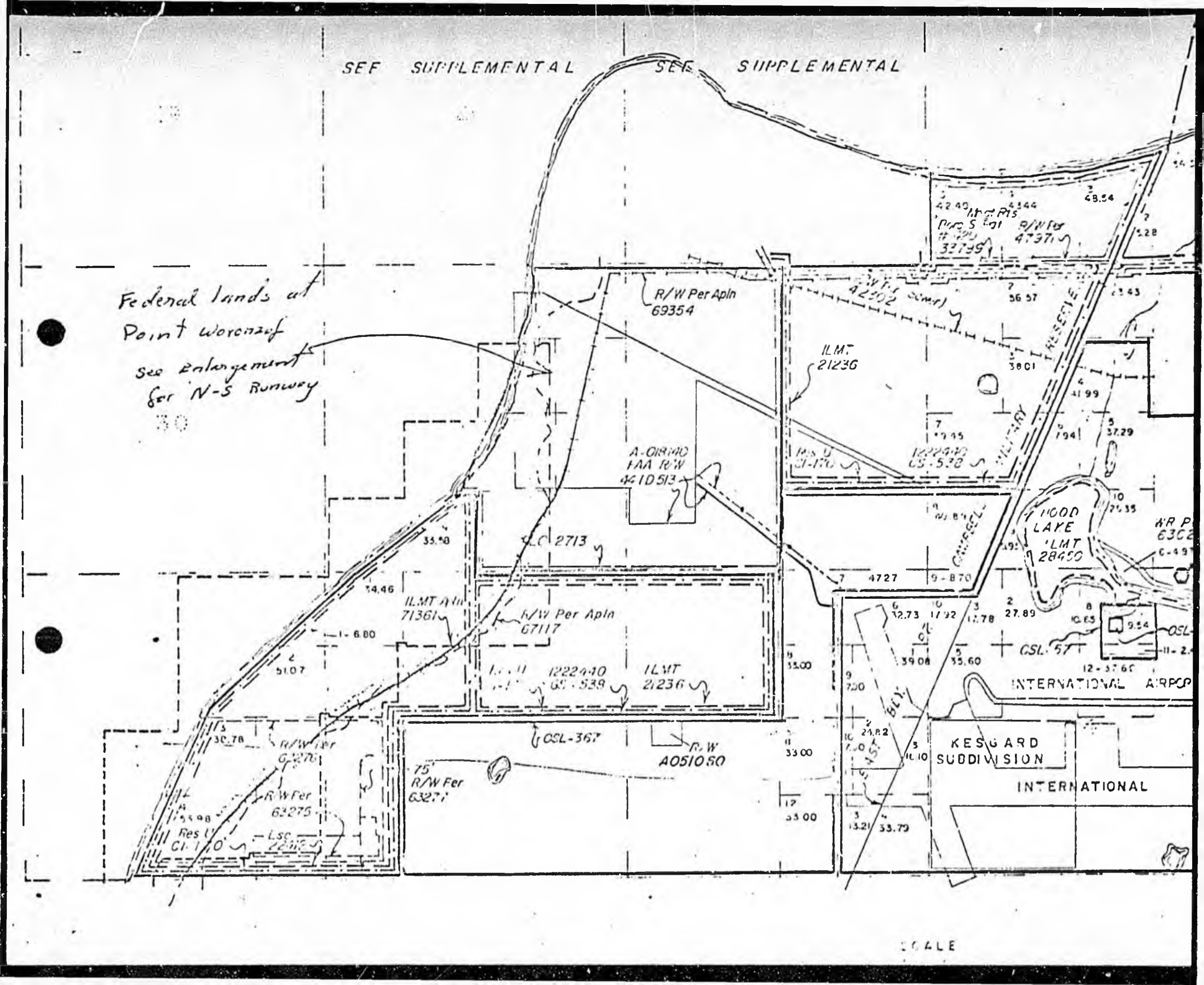
5. Present valid and existing rights within the Tract will continue (State Highways, National Guard, City water well permits, Chugach Electric rights-of-way, etc.)

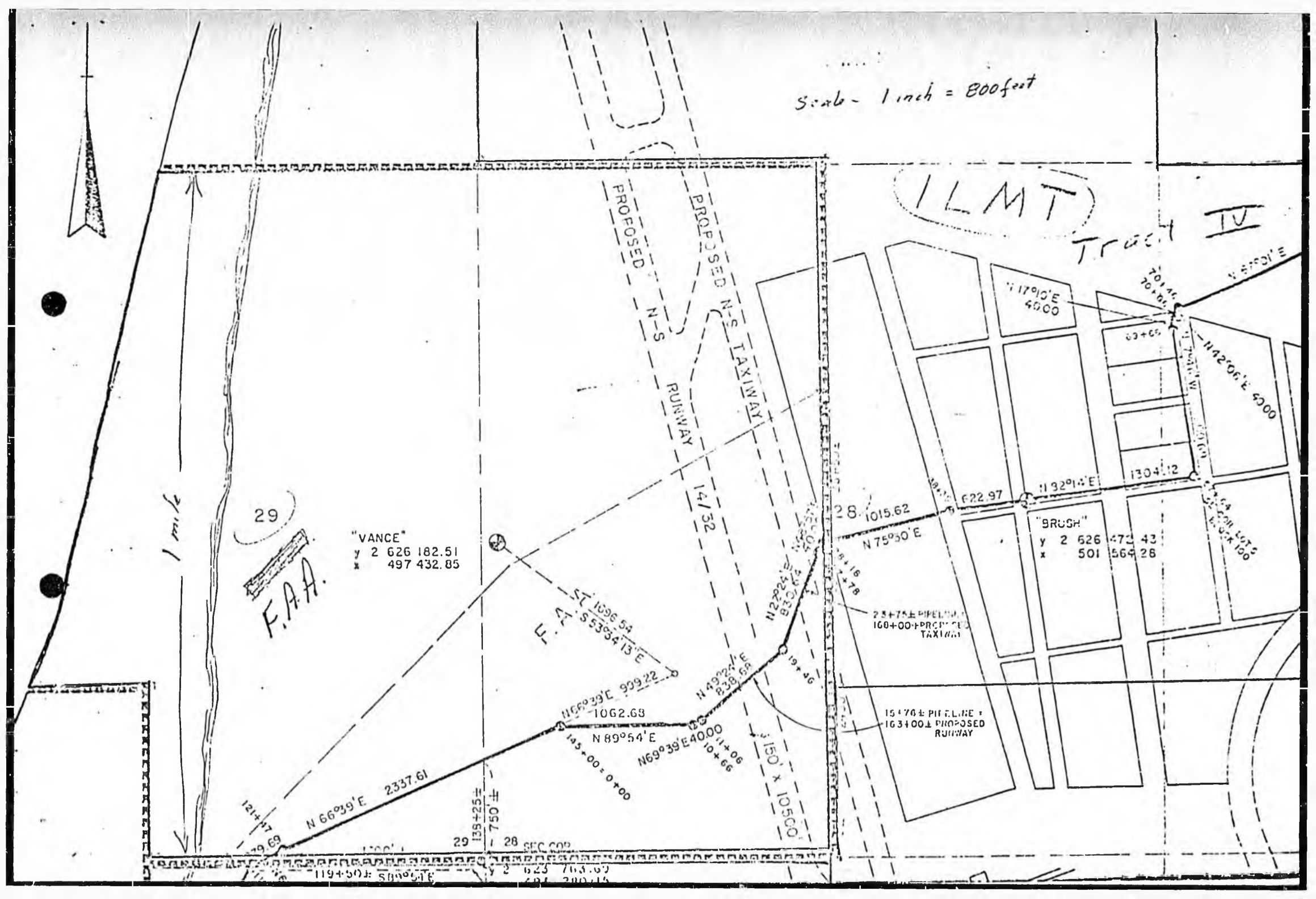
Significant acreages within the 5120 acre area known as Campbell Tract which will not transfer under this act are:

BLM	- 1000 acres
State Highways	- 40 acres
National Guard	- 50 acres
Total	1090 acres

6. The Act does not specify that Campbell Tract will ultimately be transferred to Anchorage for management and development, but this has been the long range goal and is still a valid precept.

7. A slightly revised generalized land use plan by the State, City, and BLM is in draft stages. Upon public exposure, finalization and acceptance by the State, City and BLM, the revised plan may be used to replace the Borough plan as the covenant in the land transfer.


SEE SUPPLEMENTAL
SEE SUPPLEMENTAL
Federal lands at Point Woronzof See Enlargement for N-S Runway
R/W Per Apln 69354
ILMT 21236
A-018140 FAA R/W 4410513
CSL 2713
ILMT Apln 71361
R/W Per Apln 67117
1222440 GS-539
ILMT 21236
CSL-367
R/W A0510150
75' R/W Per 63271
R/W Per 63275
Res U Cl-110'
LSC 22115
WOOD LAKE ILMT 28450
CSL-57
INTERNATIONAL AIRPOR
KESSLARD SUBDIVISION
INTERNATIONAL
SCALE


Scale - 1 inch = 800 feet
ILMT
Tract IV
PROPOSED N-S TAXIWAY
PROPOSED N-S RUNWAY 14/32
1 mile
29
28
F.A.A.
"VANCE"
y 2 626 182.51
x 497 432.85
"BRUSH"
y 2 626 472.43
x 501 569.26
N 17°10'E 40.00
N 42°06'E 400
N 32°14'E
N 75°30'E
1015.62
622.97
130+12
N 27°24'E 830.64
S 53°34'13"E 1396.54
N 49°24'E 838.68
N 66°39'E 999.22
1062.68
N 89°54'E
N 69°39'E 40.00
N 66°39'E 2337.61
750'±
150' x 1050'
145+00 = 0+00
135+25±
121+47
119+50±
10+66
19+46
16+78
23+75± PIPELINE
160+00± PROPOSED TAXIWAY
15+76± PIPELINE
163+00± PROPOSED RUNWAY
SEC COR
S 89°54'E

Article 10. Parks and Recreation Areas.

Section
295. Parks and recreation areas

Sec. 38.05.295. Parks and recreation areas. The commissioner shall establish a policy and prescribe rules and regulations by which parks and recreation areas, including public scenic overlooks and cultural sites, shall be developed and managed in a manner that will best serve the interests of the people of the state. The commissioner may classify public lands as parks, scenic overlooks, cultural sites and recreation areas as long as the general intent of this chapter is maintained. (§ 1 art XII ch 169 SLA 1959)

Am. Jur. and ALR references.—39 Am. Jur., Parks, Squares and Playgrounds, § 1 et seq.; 42 Am. Jur., Public Lands, § 1 et seq.

Uses to which park property may be devoted; power of legislature or state officers, 18 ALR 1266; 63 ALR 492; 144 ALR 509.

Article 11. Miscellaneous Provisions.

Section
300. Classification of lands
305. Review
310. Notice and appraisal
315. Public and charitable use
320. Occupied tidelands and submerged lands
325. Homestead entry
330. Permits
335. Deposits
340. Assignment
345. Notices
347. Transfer of state land to cities
348. Grants of land after natural disaster
349. Disposition of state land for flood control projects

Sec. 38.05.300. Classification of lands. The director shall make a preliminary classification for surface use of all lands in areas where he considers it necessary and proper for future development. The classification, together with a land use plan, shall be transmitted to the commissioner for his approval, modification, or rejection. This section does not prevent reclassification of lands where the public interest warrants reclassification, nor does it preclude multiple purpose use of lands whenever different uses are compatible. No state land, water, or land and water area shall, except by act of the state legislature, be closed to multiple purpose use, if the area involved contains more than 640 acres. (§ 1 art III ch 169 SLA 1959; am § 2 ch 31 SLA 1964)

Cross reference.—As to state land and water restricted to use as public recreation areas and state parks, see AS 41.20; ch. 26, SLA 1967, Temporary and Special Acts, which creates the Chena River Recreation Area; ch. 61, SLA 1966, Temporary and Special Acts, which creates the Nancy Lake State Recreation Area.

Sec. 38.05.305. Review. Except for land disposed of under §§ 315—325 of this chapter, no land in or adjacent to an incorporated municipality or other organized community may be sold or leased, or a renewal lease issued, until the proposed use of the land has been studied and reviewed jointly by the director and local authorized planning agencies. (§ 2 art III ch 169 SLA 1959)

See AGI letter of 4/23/75—

Sec. 38.05.310. Notice and appraisal. No land may be sold or leased, or a renewal lease issued without public notice, except in the case of an oil or gas or mineral lease, unless it has been appraised within 90 days before the date fixed for the sale or lease. When land is offered at public sale but is not sold and is available at private sale, no reappraisal is required unless the director considers that a change in value of the lands may have occurred. A grazing lease may be granted to a lessee of federal grazing lands without prior appraisal, if his federal lease was cancelled to allow the state to select the lands under lease. No land may be sold or leased for less than the approved, appraised market value, except as provided in §§ 315 and 320 of this chapter and §§ 75—85 of this chapter. (§ 3 art III ch 169 SLA 1959; am § 5 ch 61 SLA 1960)

Sec. 38.05.315. Public and charitable use. (a) The lease, sale, or other disposal of state land or resources may be made to a state or federal agency or political subdivision, or the lease, sale, or other disposal of coal deposits suitable for mining may be made to a utility owned and operated by a government agency or nonprofit cooperative association organized to participate under the Federal Rural Electrification Act for the purpose of generating electric power and energy or the production of process steam, or both, for less than the appraised value as determined by the director and approved by the commissioner to be fair and proper and in the best interests of the public, with due consideration given to the nature of the public services or function rendered by the agency, subdivision, or utility making application, and of the terms of the grant under which the land was acquired by the state.

(b) Notwithstanding §§ 70—80, 95, and 100 of this chapter the director, upon application filed by an applicant eligible under (b)—(d) of this section, may, by negotiation and without public auction in the manner prescribed in (b)—(d) of this section, lease state land for a term of not more than 55 years. Before leasing, the director shall prepare a land use plan and a land classification to insure that the proposed use is compatible with area utilization. Before the land may be leased under (b)—(d) of this section, it must be shown to the satisfaction of the director that the land is to be used for an established or definitely proposed project, and that the eligible applicant has the financial ability to carry out the project. The commissioner may establish limitations on the acreage which may be leased under (b)—(d) of this section to an applicant.

(c) Eligible applicants under (b)—(d) of this section are

sustained yield principle, subject to preference among other beneficial uses. The director may negotiate sales of timber or materials without advertisement and on the limitations, conditions, and terms which he considers are in the best interests of the state, subject to the approval of the commissioner. However, not more than 500 M.B.M. of timber or more than $2,500 of materials may be sold by nonadvertised, negotiated sale to the same purchaser within a one-year period.

(b) Negotiated sales for timber or materials not exceeding a value of $250 are exempt from the provisions of AS 34.15.150. (§ 2 art VI ch 169 SLA 1959; am § 1 ch 66 SLA 1969)

Sec. 38.05.120. Disposal procedure. Timber and other materials shall be sold either by sealed bids or public auction, depending on which method is determined by the commissioner to be in the best interests of the state, to the highest qualified bidder as determined by the director. An aggrieved bidder may appeal to the commissioner within five days after the sale for a review of the director's determination. The sale shall be conducted by the director or his representative, and at the time of sale the successful bidder shall deposit the amount specified in the terms of sale. The means by which the amount of deposit is determined shall be prescribed by appropriate regulation. The director or his representative shall immediately issue a receipt containing a description of the timber or materials purchased, the price bid, and the terms of sale. The receipt shall be acknowledged in writing by the bidder. A contract of sale, on a form approved by the attorney general, shall be signed by the purchaser and, following the approval of the commissioner, the contract shall be signed by the director on behalf of the state. The director, with the approval of the commissioner, may impose conditions, limitations, and terms which he considers necessary and proper to protect the interests of the state. Violation of any provision of this chapter or the terms of the contract of sale subjects the purchaser to appropriate legal action. (§ 3 art VI ch 169 SLA 1959; am § 13 ch 61 SLA 1960; am § 3 ch 137 SLA 1962; am § 1 ch 200 SLA 1970)

Article 5. Reservation of Rights to Alaska.

Section 125. Reservation

Section 130. Damages and posting of bond

Sec. 38.05.125. Reservation. Each contract for the sale, lease or grant of state land, and each deed to state land, properties or interest in state land, made under §§ 315—325 of this chapter or §§ 45—120 of this chapter, except for those lands originally acquired by purchase, exchange, condemnation, gift, escheat or foreclosure are subject to the following reservations: "The party of the first part, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, and fossils of every name, kind or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, drilling, and working mines or wells on these or other lands and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said lands or any part thereof for the foregoing purposes and to occupy as much of said lands as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved." (§ 1 art VII ch 169 SLA 1959; am § 14 ch 61 SLA 1960; am § 1 ch 42 SLA 1966)

Legislative committee report.—For report on ch. 42, SLA 1966 (HB 387 am), see 1966 House Journal, p. 492.

Sec. 38.05.130. Damages and posting of bond. No rights shall be exercised by the state, its lessees, successors or assigns under the reservation as set out in § 125 of this chapter or until the state, its lessee, successors, or assigns make provisions to pay to the owner of the land full payment for all damages sustained by the owner, by reason of entering upon the land. If the owner for any cause refuses or neglects to settle the damages, the state, its lessees, successors, assigns, or an applicant for a lease or contract from the state for the purpose of prospecting for valuable minerals, or option contract or lease for mining coal or lease for extracting petroleum or natural gas, may enter upon the land in the exercise of the reserved rights after posting a surety bond determined by the director, after notice and an opportunity to be heard, to be

PART 6. LANDS

Chapter
52. Land Planning and Classification
54. Disposal of Lands
56. Homesteading
58. Leasing of Lands
60. Grazing Leases
62. Tide and Submerged Lands
64. Shore Fisheries Leasing
68. Land Platting and Vacating
72. Water Use
76. Timber and Material Sales
80. Pipeline Right-of-Way Leasing
82. Mineral Leasing Procedure
83. Oil and Gas Leasing
84. Other Leasable Minerals
86. Mining Rights
88. Practice and Procedure
92. Forest Protection
96. Miscellaneous Land Use
98. General Provisions (no regulations filed)

CHAPTER 52. LAND PLANNING AND CLASSIFICATION

Section
10. Short title
20. Unclassified lands
30. Classification
40. Agricultural lands
50. Commercial lands
60. Grazing lands
70. Industrial lands
80. Material lands
90. Mineral lands
100. Public recreation lands
110. Private recreation lands
120. Residential lands
130. Reserved use lands
140. Timber lands
150. Utility lands
160. Watershed lands
170. Resource management lands
180. Open-to entry lands
190. Reclassification
200. Multiple use
210. Preparation of plan
220. Definitions

11 AAC 52.010. SHORT TITLE. This chapter pertains to the classification of lands of the State of Alaska under the jurisdiction of the Division of Lands, Department of Natural Resources, and related matters. The intent of this chapter is to establish a system of land classification which will encourage the maximum development and utilization of all of Alaska's land resources consistent with the public interest. This chapter may be referred to as the "Land Planning and Classification Regulations." (Eff. 7/1/60, Reg. 1; am 5/23/64, Reg. 16)

Authority: AS 38.05.020
AS 38.05.300
AS 41.20.020

11 AAC 52.020. UNCLASSIFIED LANDS. All lands shall, upon transfer to the state's jurisdiction, be unclassified in status. The disposal of minerals only shall be permitted on unclassified lands. All other disposals of lands and resources shall be permitted only after the lands have been classified. (Eff. 7/1/60, Reg. 1; am 5/23/64, Reg. 16)

Authority: AS 38.05.020
AS 38.05.300
AS 41.20.020

11 AAC 52.030. CLASSIFICATION. Lands shall be classified into one or more of the following categories: agricultural lands, commercial lands, grazing lands, industrial lands, material lands, mineral lands, private recreation lands, public recreation lands, reserved use lands, residential lands, timber lands, utility lands, watershed lands, resource management lands or open-to-entry lands.

Classification shall become effective upon the noting of such classification upon the public records maintained by the division.

The classification of lands as agricultural lands, commercial lands, industrial lands, private recreation lands, public recreation lands, reserved use lands, residential lands, watershed lands, resource management lands or open-to-entry lands shall close said lands to the removal of minerals therefrom, except upon the issuance of a mineral or mining lease or permit for such removal. No classification, however, shall preclude the disposal of timber and materials unless deemed inconsistent with the

Rec'd 3-23
applicable to Cook Inlet

The United States of America and Alaska Natives have a very special relationship which requires understanding of its constitutional and historical basis for this special responsibility and authority over the Alaska Natives.

Many Americans are faced with great difficulty if they have not discovered the United States Constitution and what it empowers. Along with many Americans, special Alaska Natives, they must understand the expressed constitutional sources of these special rights.

In the Constitution of the United States of America, Indians are expressed twice:

Article I, Section 2, Clause 3:

> "Representatives and taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons."

And in Article I, Section 8, Clause 3, provides that:

> "To regulate commerce with foreign nations, and among the states, and with the Indian tribes,...
>
> ...and the additional constitutional sou. ces of authority over Natives."

Article I, Section 8, Clause 1, provides that:

> "The Congress shall have powers to lay and collect taxes, duties, imports, and excises to pay the debts and provide for the common defense and general welfare of the United States."

Article I, Section 9, Clause 7, provides that:

> "No money shall be drawn from the Treasury, but in consequence of appropriations made by law."

Article 4, Section 3, Clause 2, provides that:

> "The Congress shall have power to dispose of and make all needed rules and regulations respecting the territory or other property belonging to the United States."

Article II, Section 2, Clause 2, provides that:

"He shall have power, by and with the advice and consent to make treaties..."

"He shall nominate and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of Supreme Court, and all other officers of the United States."

Article II, Section 3, provides that:

"He shall, from time to time, give the the Congress information of the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient."

Article IV, Section 3, Clause 1, provides that:

"New states may be admitted by the Congress into this Union but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the two or more states, or parts of states be without the consent of the legislatures of the states concerned as well as of the Congress."

Article I, Section 8, Clause 2, provides that:

"To declare war, grant letters or marque and reprisal, and make rules concerning captures on land and waters."

Article I, Section 8, Clause 9, provides to state:

"To constitute tribunal inferior to the Supreme Court."

Article 3, Section 1, provides that:

"The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."

Article I, Section 8, Clause 4, provides that:

"To establish a uniform Rule of Naturalization."

Article I, Section 8, Clause 18, provides that:

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Sovereignty of the United States or any Department of Affairs thereof."

Article I, Section 1, provides that:

> "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Therefore, the United States Government derives its sovereignty from the powers delegated by the States, the Constitution of the United States; ~~the Constitution of the United States~~ forms the basis of federal control over Alaska Natives.

It is paramount that the Alaska Native understand the expressed congressional powers in the areas of: 1) treaty powers, 2) commerce with Indian tribes, 3) expenditures for the general welfare, 5) to admit new states and to prescribe the terms of such admission, 6) to establish tribunals inferior to the Supreme Court, 7) all legislative powers, 8) to establish a uniform rule of naturalization, 9) from the sovereignty itself, and how they relate to Alaska and Native people.

COMMERCE WITH INDIAN TRIBES

United States V. Kagama

The Supreme Court of the United States affirmed that, "Congress is given power to regulate Commerce, with the Indian."

"From their very weakness and helplessness, so largely due to the course dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress, and by this court, whenever the question had arisen. The power of the General Government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as safety of those among whom they dwell. It must exist in that government, because it has never been denied and because it alone can enforce its laws on all the tribes."

And just as equally important to Alaska Natives is "when a State is admitted into the Union, Congress may, in the enabling act, reserve authority to legislate in the future respecting the Indians residing within the new state, and may declare that existing acts of Congress relating to traffic and intercourse with remain in force."

TREATY POWERS

First, there was the Treaty of Cessions of 1867 whic[illegible]eclared that civilized Indians, should like other inhabitants of the territory, "be admitted to the enjoyment of all rights, advantages and immunities of citizens of the Unites States, and shall be maintained and protected in the free enjoyment of their rights, property and religion." It then went on to add: "The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to the aboriginal tribes of that country."

Commenting on these treaty guarantees, the late Republician Delegate from Alaska, Judge Wickersham, said:

"The clause taking over these people in Alaska, Russians and other is, I think, identically the same clause that is found in the treaty by which we pruchased Louisiana and by which we secured that Mexican provinces after the Mexican War, that is California, Arizona and New Mexico.

"So that the Alaskan Indian at that time came in with the same assurance of citizenship in the United States as those in the Louisiana ans Mexican purchases, and the uncivilized Indians came in with the assurance they would be treated exactly as the Indian tribes of the United States are.

"So that extends to Alaska the policy which this Government has always maintained, and which was maintained before this Government was organized by the British govern-

ment, in respect to the Indians there and their titles were always quieted by a treaty and by purchase.

"Of course, there were some areas of land where there were no Indian claims. Those lands came into the public domain, without that procedure being taken. Where ever there was in Indian claim of possession, however, it has been the policy of our Government from the beginning and the British Governemnt prior to that time, to settle with these Natives and procure the quieting of their passersby right by purchase.

"Now that policy was extended into Alaska by the third article of this treaty of 1867, purposely, intentionally and the courts have universally held that they stand in the same exact relation to the Government of the United States, with their property and other rights, that the Indians in the States do."

UNITED STATES TERRITORY AND PROPERTY

The control of land, water, and other property belonging to the United States is vested exclusively in Congress by the Constitution. The Alaska Natives lived on the national domain, within the geographical limits of the United States. By its virtue of control over public domain and the territories of the United States, the Government is able to exercise broad dominion and control over Alaska Natives and to effectuate many policies. No appropriation of public lands may be made for any purpose except by the authority of Congress.

In the exercise of this authority, that Congress finds and declares that:

2. There is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska based on aboriginal land claims.

26. To the extent that there is a conflict between any provision of the Act, any other Federal laws applicable to Alaska, the provision of this Act shall govern.

This comprehensive authority of Congress over public land includes power to prescribe the times, conditions and mode of transfer thereof, to designate the persons to whom the transfer shall be made, to declare the dignity and effect of titles emanating from the United States, to prevent unlawful occupation of public land and to declare all nuisances, affecting such property and provide for the abatement by Executive orders--for the purpose of creating Indian reservations.

No state can tax public lands of the United States within its borders, nor can state legislation interfere with the power of Congress under this clause or embarrass its exercise.

From the "Law of the Land," in both Johnson V. McIntosh and Worcester V. Georgia, Chief Justice Marshall formulated his conclusions respecting aboriginal title by an historical analysis of the explorations and settlement of the American Continent and by relying upon established principles and practices of the law of nations.

The Chief Justice stated:

"The great maritime powers of Europe discovered and visited different parts of this continent, at nearly the same time. The object was too immense for any one of them to grasp the whole; and the claimants were too powerful to submit to the exclusive or unreasonable pretentions of any single potentate. To avoid bloody conflicts, which might terminate disasterously to all it was necessary for the nations of Europe to establish some principle which all would acknowledge, and which should decide their respective rights as between themselves. This principle, suggested by the actual state of things, was; 'that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession.' 8 Wheat. 573. This principle acknowledged by all

Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil and of making settlement on it. It was an exclusive principle, which shut out the right of competition among those who had agreed to it, not one which could annul the previous rights of those who had agreed to it. It regulated the right given by discovery among the European discovers, but could not affect the rights of those already in possession, either as aboriginal occupants, or as occupants by virtue of a discovery made before the memory of man. It gave the exclusive right to purchase, but did not found that right on a denial of the right of the possessor to sell. 31 U. S. (6. Pet.) 515. The court further declared: Michael V. United States, (9. Pet.) 711, 745 (1835) "Indian possession or occupation was considered with reference to their habits and modes of life, their hunting grounds were as much as in their actual possession as the cleared fields of the Whites, and their rights to its exclusive enjoyment in their own way and for their own purposes were as much respected, until they abandoned them, made a cession to the government, or an authorized sale to individuals."

DISCLAIMER CLAUSE

Section 4 of the Statehood Act, which, as amended in 1959, 73 Stat. 141 reads:

> "As a compact with the United States said states and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted, or confirmed to the state or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights) the rights or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called Natives) or is held by the United States in trust for said Natives. That all such lands or other property (including fishing rights) the right or title to which may be held by said Natives as is held by the United States in trust for said Natives shall be and remain under the absolute jurisdiction and control of the United States until dis-

posed of under its authority except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual Natives in fee without restrictions on alienation: Provided that nothing contained in this Act shall recognize, deny, enlarge, impair or otherwise affect any claim against the United States, and any such claim shall be governed by laws of the United States applicable thereto; and nothing in this Act is intended or shall."

LEGISLATIVE PROTECTION/POSSESSORY RIGHTS

From the Constitution, Article 1, Section 1.

"All legislative power herein granted shall be vested in Congress..."

"Congress has declared that shall that not be disturbed in the possession of lands in their use and occupancy and claimed by them (Section 8, ret. of May 17, 1884, 23 Stat. 26) and whether further protection shall be extended to them by the setting aside of specific reservations for their use of a matter policy."

Since 1884, Congress has in four other statutes expressly recognized the possessory rights of Alaska Natives.

In the District Court of Alaska, in the case of Johnson V. Pacific Coast S. S. Co. 2 Alaska Rep. 224 said:

"The evident purpose of Congress is to protect the Natives in the possession of lands continuously claimed and occupied by them." 2 Alaska 224, at 241.

A year later in United States V. Berrigan 2 Alaskan Rep. 142, the District Court of Alaska is issuing an injunction against timber cutting and other forms of trespass on a Native village site declared:

"The Tenneh Tribes of Alaska were uncivilized Native tribes at the date of the treaty with Russia, and the evidence in this case shows that the bar l for which this suit is brought still occupies that plane of culture, as such they are entitled to the equal protection of the law which the United States affords to similar aboriginal tribes

within its borders." (at pp. 447-448)

Congress has also by special enactment provided for the protection of the Indian right of occupancy upon the public domain in Alaska:

"The United States has the right and it is its duty, to protect the property rights of its wards."

In Nagle V. United States 191 Fed. 141 (C.C.A. 9.1911) at p. 450, the court declared:

"There can be no doubt that this stipulation relates to the Indian tribes in Alaska, and manifestly the treaty was designed to insure them like treatment, under the laws and regulations of Congress, as should be accorded Melron Tribes in the United States." (at p. 142)

In Abbate V. United States 270 Fed. 735 (1925), the Circuit Court of Appeals for the Ninth Circuit (at p. 736) said: "...that Alaska, in 1918, was Melron County and, therefore, subject to special Congressional liquor control on that basis."

In its decision, Miller V. United States, 159 F. 2d 997 (1947), on the scope of the 1884 Act, the Circuit Court of Appeals for the Ninth Circuit declared: "From the foregoing statutes and decisions, it is clear that Congress, since 1884, has intended to protect, recognize and even guarantee the possessory rights of those Tlingit Indians. Such rights are compensable, for their holders are neither squatters nor outlaws."

The court in the same, Miller case, rejected the contention of the Department of Justice that only a tribe could claim possessory rights under the 1884 Act and held that the individual plaintiffs (comprising apparently all the known adult members of the tribal group originally occupying this land) could recover the value of all the area. There is no holding in any case that a group of Indians may not present their claims collectively and such claims, when so presented, have regularly been allowed.

In Tee Hit Ton Indians, costly historical lesson was learned of the vulnerability of Native possessory rights to be extincted uncompensated. The court found Tee Hit Ton V. United States that:

"This is not a property right, but amounts to a right of occupancy which the sovereign grants and protest against intrusion by third parties, but which right disposed of by the sovereign itself without any legally enforceable obligation to compensate the Indians." (348 U. S. at 279)

"...Indian occupation of land without government recognition of ownership creates no rights against taking or extinction by the United States protected by the Fifth Amendment or any other principle of law." (348 U. S. at 285)

It is further clear from the opinion in Tee Hit Ton that only Congress may extinguish such rights.

Until Congress acts to extinguish them, these rights to occupancy safeguarded from intrusion by third parties remain intact as an encumbrance on the fee (Walapai tribe, at 347); and, until an authorized transfer of title takes place, the fee remains in the United States. Tee Hit Ton Indians V. United States (348 U. S. at 279) Buttz V. Northern Pacific Railroad 119 U. S. 55, 66 (1886); Beecher V. Wetherby, 95 U. S. (5 Otto) 517, 525 (1877).

In a recent court decision, Edwardsen V. Morton, it so stated that:

"Defendants possible breach of their duty of protection is even plainer where the direct issuance to third parties of special land use permits, blasting licenses, and the like is concerned. Most such permits and licenses would necessarily authorize physical intrusion on the lands for which they were issued, and if plaintiffs could show their use and occupancy was disturbed thereby at a time when their use and occupancy

rights were in force and effect and unextinguished, it would certainly be plain that defendant had violated their duty to protect plaintiffs from third party intrusion. Issuance of such permits or licenses would also be clear violation of Department of Interior regulation designed to protect Native rights in lands actually occupied by them." See e.g. 43 CFR 2091.5 and 2091.6-3 (1972).

The court further states:

"Plaintiffs are entirely correct in their contention that insofar as these claims represent accured causes of action for trespass and breach of fiduciary duty, they are vested property rights protected by Fifth Amendment." Coombes V. Getz 285 U. S. 434, 448 (1932) Ettor V. City of Tacoma 228, U. S. 148 (1913) Keller V. Dravo Corporation 441 F. 2d 1239, 1242 (5th Cir. 1971).

TEST FOR USE AND OCCUPANCY

Aboriginal title has always been determined by exclusive occupancy. A carefully reasoned application of this legal test for aboriginal title is found in Seminole Indians, where Court of Claims upheld, aboriginal title to virtually all of the present State of Florida. The court so stated:

"Had the Seminoles chosen to live by food raising alone, we would regard the village evidence (stressed by the Government) as a persuasive consideration in limiting the Seminoles' "title" to land falling within the compass of their permanent homesites, i.e., the northern half of the peninsula. Cultures that stake their survival upon a close union with the soil, as is the cases with primitive food raising economics, would not demand the vast tracts of land required for a nomadic, hunting existence. But the Seminoles--as was the case with many other Indian groups--survived not simply through

farming, but by food gathering and hunting as well. In other words, Seminole land use clearly encompassed more than the soil actually "possessed." Therefore, other aspects of the Seminole pattern of life demand considerations."

Not only did these Indians wander in search of food supplements, but as already indicated, the appearance of the English in Florida spurred a demand for hides that compelled the Seminoles to make extensive use of the southern peninsula.

Given these facts--which are not in the slightest way disputed--we believe that the Commission, as the trier of fact, could reasonably have concluded that Seminole "use and occupancy" was adequate to sustain a claim of original title to the Florida peninsula. The area acknowledged by the Commission as being within Seminole dominion constituted a definable territory occupied exclusively by the Seminoles. And since the use and occupancy is essential to the recognition of the Indian, title does not demand actual possession of the land, but may derive through intermittent contracts; Spokane Tribes of Indians V. United States 163 ct. cl. 58, 66 (1963), which defines some general boundaries of the occupied land, Upper Chehalis Tribes V. United States 140 ct. cl. 192, 155 F. Supp. 226 (1957). The Commission's determination that the Seminoles occupied all of Florida may not be regarded as legally defective.

Nor does the Government's reference to population thinness compel a different result. In stressing this consideration, the Government leans far too heavily in the direction of equating "occupancy" or capacity to occupy with actual possession, whereas, the key to Indian title has in evaluating the manner of land use over a period of time. Physical control or dominion over the land is the dispositive criterion. Thus, when consideration is given to the fact that Seminoles hunted throughout the southern peninsula and that they also traveled this territory--much of which was covered by

water; and, further, that their emergence as a distinct Indian group was achieved through the amalgamation of many diverse elements, some of which had always dwelt within the southern peninsula--then, we believe, there exists a reasonable basis for our accepting the Commission's determination that Seminole title embraced the entire peninsula.

In Tlingit and Haida Indians of Alaska V. United States 147 ct. cl., 326 (1959) the court said:

"Indian lands, prior to the extinguishment of Indian title, were not surveyed. They were not fenced to shut out trespassers or to mark boundaries."

This in effect said that boundary notions were of Anglo-American jurisprudence, foreign to most Indian cultures, which in a time sense of the word, vulnerable to trespass and result in diminution of such rights by third parties.

As to the Sovereign of the United States, the United States Supreme Court has defined a recognized claim as follows: "There is no particular form for congressional recognition of Indian right of permanent occupancy. It may be established in a ways but there must be the definite intention by congressional action or authority to accord legal rights, not merely permissive occupation. Tee Hit Ton Indians V. United States 348 U. S. at pp. 277-278. Thus resulted that:

"Recognized Indian claims have always been compensable under the Constitution."

Under the tribunal system of the United States, the Court of Claims was established in 1855, with given jurisdiction to entertain suits against the Federal Government. The Doctrine of Sovereign immunity holds that the United States may not be proceeded against in the courts unless special jurisdictioned acts were inacted by Congress. Final by 1946, a bill to establish a special tribunal to adjudicate Indian claims was enacted. In it were claims brought before it are land cessions to the United States by treaty or to

lands taken pursuant to statute for compensation.

Section 2 of the Act provides:

A. Claims in law or equity arising under the Constitution, laws, treaties of the United States, and executive orders of the President.

B. All other claims in laws or equity those sounding in tact with respect to which claimant would have entitled to sue in a court of the United States was subject to suit.

C. Claims, which result of the treaties, contracts, and agreements between the claimant and the United States were raised on the ground of fraud, duress, unconscionable consideration, mental or unliternal mistake, whether of law or fact or any other ground recognizable by a court of equity.

D. Claims arising from the taking by the United States, whether as a result of a treaty or cession or otherwise, of land owned or occupied by the claimant without the payment of such lands of compensation agreed to by claimant, and

E. Claims based upon fair and honorable dealings that are not recognized by any existing rule of law of equity.

The famous case in Alaska is Tlingit and Haida Indians V. United States, where consent of United States was given to sue. Apart from Tee Hit Ton Indians V. United States, lack of standing to sue, Tlingit and Haida 389F 2d 778 (ct. cl. 1968) further established as the court so stated:

"The measure of value is the fair market value on the date of taking. The measure of value is the same whatever the nature of the title involved, i.e., whether aboriginal (Indians) title or recognized (reservations) title. Although a mere possessory right or use and occupancy, it has been held that Indian title is as valuable as a fee simple title."

This case is of great importance to all Natives of Alaska becuse of courts decision that the Department of Justice able attempt to establish a method of valuing the land according to the cast of subsistence for Indians on the land at the material time, but this approach has found favor neither with the Commission nor the courts.

From the Handbook of the Law of Trusts by G. Bogert, 97 at 257 (1963).

A trustee is under a duty to the beneficiary to take reasonable steps to realize on claim which he holds in trust. If he fails to take such steps as are reasonable for such loss as results from his failure to act, where the claim could have been collected in full if he had taken proper proceedings to collect it and because of his delay the claim has become uncollectable he is subject to a surcharge for the full amount of the claim and interest thereon.

He, the trustee, is subject to a surcharge if he does not take reasonable steps to enforce a claim against predecessor trustees--or to redress a breach of trust committed by them.

Federal official must discharge "moral obligation of the highest responsibility and trust," Seminole Nation V. United States 316 U. S. 286, 297 (1942) and are "bound by moral and equitable consideration to discharge (the United States) trust with good faith and fairness.

Further more the resigned President Richard M. Nixon once stated in his message to Congress declared this very trust as:

"The United States Government acts as a legal trustee for land and water rights of American Indians. These rights are often of critical economic importance to the Indian people, frequently they are also the subject of extensive legal dispute..."

Every trustee has a legal obligation to advance the interests of beneficiarias of the trust without reservation and with the highest degree of deligence and skill. This added emphasis comes from the Constitution of the United States as Article II, Section 3, so provides:

He shall, from time to time, give to the Congress information of the State of the Union and recommend to their consideration such measure as he shall judge necessary and expedient. Not only from the President of United America to Congress but the court has further stated this trust to Secretary of the Interior as Judge Gesell so ably stated in Pyramid Lake Parute Tribe of Indians V. Morton 358 F. Supp. 252 (D.D.C. 1973).

A judgement call was simply not legally permissible...

In order to fulfill his fiduciary duty the Secratary must insure to the extent of his power, that all water not obligated by court decree or contract with the District goes to Pyramid Lake. The United States, acting through the Secretary of the Interior, "has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with Indians should, therefore, be judged by the most exacting fiduciary standards."

He, Gesell, further disagrees with the Secretary of the Interior and so stated:

"Undertakings with Indians are to be liberally construed to the benefit of the Indians and the duty of the Secretary to do so is particularly apparent..."

The Secretary was obliged to formulate a closely developed regulation that would preserve wate for the Tribe. He was further obliged to assert his statutory and contractual authority to the fullest extent possible to accomplish this result. Difficult as this process would be, and troublesome as the repercussions of his actions might be, the Secretary was required to resolve the conflicting claims in a precise manner that would indicate the weight given each interest before him. Possible difficulties ahead could not simply be blunted by a "judgement call" calculated to placate temporarily conflicting claims to precious water. The Secretary's action is, therefore, doubly

defective and irrational because it fails to demonstrate an adequate recognition of his fiduciary duty to the Tribe. This is also an abuse of discretion and not in accordance with law.

In accordance of this trust the court in Edwardsen V. Morton, April 19, 1973:

"The court cannot pretend that justice in a platonic sense can be rendered in this case. Perhaps in an ideal system of moral accounting plaintiffs would be entitled to all of the lands they have claimed regardless of the interests claimed by the State of Alaska and others in these lands. This court is, however, not free to allow plaintiffs to proceed on such a theory when decision of the Supreme Court and Acts of Congress foreclose it. The court can and it has here attempted to set forth framework within which plaintiffs can seek to establish the factual basis for the relief to which they are entitled under the Constitution and laws of the United States if thier claims are proven."

With this, the Native people of Alaska must execute what is constitutionally theirs.

to be conveyed away. Alaska citizens are denied any development plan for the lands to be given up, with which to properly assess values

(c) It is impossible to obtain a complete and unbiased geological report by state geologists. This results not only from inadequate time, but also from intimidation of professional staff by gubernatorial firing of a chief advisor for giving testimony before the Alaska legislature against the attempted land exchange. Present reports from the Alaska Division of Geological and Geophysical Survey are so incomplete as to be false. These present reports show evidence of having been instigated and hastily-prepared to support a predetermined conclusion by officials named earlier in this affidavit.

(d) Advice from the Joint Federal-State Land Use Planning Commission has been compromised by the firing of the state co-chairman, David Jackman, as noted above. The pressure on other state-appointed members of the Commission tends to bias, not rational consideration and impartial advice. A new appointee, mindful of the fate of his predecessor, may vote accordingly.

(e) Increase in the value of Governor and Master Guide Jay S. Hammond's Lake Clark lodge, resulting from creation of nearby federal and state hunting lands protected from Native hunting restrictions, creates another conflict of interest which further taints any determination of equal value by the present administration.

To: Senator Kay Poland

From: George C. Silides, P.E.

Subject: Cook Inlet Land Trade

Transmitted herewith is the final Committee Report on HR 6644. I can find no substantive changes from the preliminary report you received earlier, except that this edition is much more complete.

Pages 1 - 10 represent the final language of the Bill itself as passed. The earlier edition of HR 6644 that we sent you shows, also, the original language that was deleted. Sections 12 and 17 of HR 6644 deal with the land trade between the State of Alaska and the Cook Inlet Native Regional Corporation. Section 12 describes the trade, and Section 17 sets aside the restrictions of the Alaska Statehood Act to permit accomplishment of this and any other and future trade. (Emphasis added).

Pages 10 - 14 constitute a letter of intent. It is noted that the State-Cook Inlet trade was not included in the Purpose description of the original Bill.

Pages 14 - 54 are a Section - By - Section Analysis. Section 12, which describes the trade in general terms begins on page 30. A detailed description of terms and conditions of the trade begins on page 35 and extends through page 52. The present prohibitions of the Statehood Act and the consequences of its being amended are recited at the bottom of page 34 and the top of page 35.

Pages 54 - 58 describe changes in existing law that were caused by HR 6644. Section 17 on page 56 is germane.

Pages 58 - 85 include reports by the various federal departments concerning their feelings on the measure. Not all are favorable. The Department of Agriculture specifically objects to the inclusion of Section 12 on the basis that the section reopens conflicts that ANCSA was intended to resolve.

The Congress had taken due note of the existing debate as to the propriety of the State's involvement and of the nature and extent thereof. The Governor has promised that he will not implement the terms of Section 12 of HR 6644 unless the Legislature concurrs. Section 12 (c) (3) (i) (center-of page 8), calls for a report by the Secretary of the Interior to Congress by April 15, 1976. The Legislature's decision must reach him in time to prepare that report. He reserves until December 18, 1976 to make other

amends to Cook Inlet if you decide to reject the Administration's proposal as set out in HR 6644.

We are unaware of the form in which the Governor will submit his request for your approval of his administration's actions. It may be in the form of a Resolution. We suspect, however, that since the prohibition against the transference of mineral rights and the equal value provision still remain as part of the Alaska Statutes, he will submit a Bill amending Title 38.

I suggest that the Congressional Committee Report and this letter of transmittal letter be forwarded to the Legislature's head of legal section for his examination and comments, especially concerning any extinguishment of the State's rights by this arbitrary and unpublicized action of the Congress at the request of our Administration.

MAR 6, 1976 ANCH DN

'No going back' on land trade

By ROSEMARY SHINOHARA
Daily News Staff Writer

The chief federal negotiator for the Cook Inlet land trade warned Friday that if the proposed agreement now begore the legislature is not ratified "there will be no going back to a three-way agreement."

E.U. Curtis Bohlen, deputy assistant secretary for the Interior Department, told the Joint Federal State Land Use Planning Commission that Congress was distrubed because his department did not give Cook Inlet Region, Inc. (CIRI) Native Corporation good land from which to choose.

U.S. SEN. HENRY JACKSON, of the Interior and Insular Affairs Committee let the department know he would be "quite willing" to legislate a solution, which might be the offer made earlier by an Interior Department solicitor and rejected at the time by Cook Inlet Region, Bohlen said. That offer would have turned over substantial acreage in the Kenai National Moose Range to the corporation.

The Land Use Commission heard from Bohlen and representatives of CIRI and the state Division of Lands

How valuable is the land?
See Page 2

Friday, and the commission will meet again today to make recommendations to the legislature on whether to approve the trade.

The legislature must act before March 12 to meet a congressionally imposed deadline.

Mike Smith, director of the Division of Lands, and Roy Huhndorf, president of CIRI, both attacked recent evaluations of the trade which are based solely on economic values.

THE STATE WILL RECEIVE more than equal value in the trade, but the values are not strictly economic, Smith said.

"Anyone today who believes government's role vis-a-vis land and resource management is concerned strictly with economic values is Neanderthal in their thinking," Smith said.

The federal Homestead Act and the act which gave lands for railroads to cross are examples of land resources being given away to further a public purpose that wasn't strictly economic, Smith said.

IN THE STATE, THE new homesite bill and the open entry program are similar public interest programs. Some of the critics of the land swap are people who support those programs and

(Continued on page 2)

E.U. Curtis Bohlen, deputy assistant secretary of the Department of Interior.

Daily News

Aftermath of an accident

A four-car collision at the intersection Road and Airport Heights Drive Friday caused no deaths, but severely damaged t biles and injured (above center) Frank C left, and Michelle Doran, 20. Paramedics son, left, and Bobbie Smith treated the scene.

Banks may be as to report home l

By HOWARD WEAVER
Our Juneau Bureau Chief

JUNEAU — Homeowners would be able to tell if banks "have written off their neighborhood" under provisions of a bill which passed the House by a 21-11 margin Friday.

The measure, House Bill 572, would require banks to report annually how much they have loan in neighborhoods aro follows the guidelines but narrows the repor zip-district to a censu expands the amount which must be reporte

"PEOPLE HAVE a bankers have wr neighborhoods," Rep. D-Dist. 9, said. He to bill he sponsored information so a wide could assess what act ensure a flow of ca "redlined" by financia

McKinnon called practice a "self-fulfill banks decide not to because it is decaying money will cause it further," he said.

Rep. Rick Urion, R the bill "unnecessary,

Native land held for corridors

BY PAM ROGERS
Daily News Staff Writer

All lands conveyed to Natives under the Alaska Native Claims Settlement Act will be reserved for future energy-related easements under an order handed down Friday by Interior Secretary Thomas S. Kleppe.

The Interior Department's long awaited decision is an abrupt reversal of earlier proposals to identify and set aside specific corridors across Native lands

Friday afternoon that reserving all Native lands for future easements will remove any cloud on the lands which could be created by identifying specific corridors at this time.

THE ORDER APPEARS TO contradict itself on the question of whether or not the government will set aside easements for the purpose of transporting privately owned resources.

Section 5 of the order says it will not: "Privately

they do not know whether the term "United States" means the federal government or the nation as a whole.

Asked whether offshore oil development would be considered public or private, a spokesman said there is "no question" the leases are owned by the government and thus will require government-reserved easements across Native lands.

Exempted from reservation for easements are

down to the $102 million the board will decide upon Monday night.

necessary to the system. One cut, that of an artists - in - the - schools program

approves the budget, it will be sent to the Anchorage Assembly, which has the final say.

Well, no matter, for the performance of Bonita Mertes is alone worth the price of admission.

Evaluating the Cook Inlet swap decision

(Continued from page 1)

don't recognize the similarity, he said.

Huhndorf said the coal reserves to be transferred to CIRI have been subject to evaluations that have "an inflation rate that defies imagination." Each week it seems that Cook Inlet is to obtain more and more coal until the region is literally drowning in its."

The Native corporation executive also recounted what CIRI gave up in the deal:

—Claims to Point Campbell, Campbell Airstrip and Point Woronzoff in the Anchorage Borough and claims to the Swanson River oil fields.

—Claims that would adversely affect wildlife habitats and recreational interests.

—Claims to lands located near potential capital sites.

The region had to shift more than half its land outside the boundaries of the region against its will, and the total surface land to which the corporation is entitled has been reduced. The state and federal government will have more control over CIRI selections than selections by any other region.

ALL THREE NEGOTIATORS also talked about provisions of the land trade agreement that call for CIRI to choose some land from the regions surrounding it.

Doyon, Inc., the Fairbanks-based regional Native corporation, is agitating for further concessions from Cook Inlet Region, and Doyon has more leverage than most because its president, JohnSackett, is an influential state senator and a Doyon board member, Tim Wallis, is also in the legislature.

Bohlen said, "I find it a shame that after having reached that agreement there is now slippage — an effort to extract that extra pound of flesh." CIRI bent over backwards to be accommodating to the other regions when the agreement was being drawn up, Bohlen said.

Huhndorf said the provisions for out-of-region selections were made "only with the deepest tolerance and conern by our sister regions."

Huhndorf and Smith both discounted arguments that the out-of-region selections will jeopardize the state's interest in its own future selections. Smith showed graphically in a diagram that there would be very little conflict between state selections and CIRI selections, mostly because the CIRI selections would be minimal compared to the land available to the state.

ANCHORAGE DAILY NEWS

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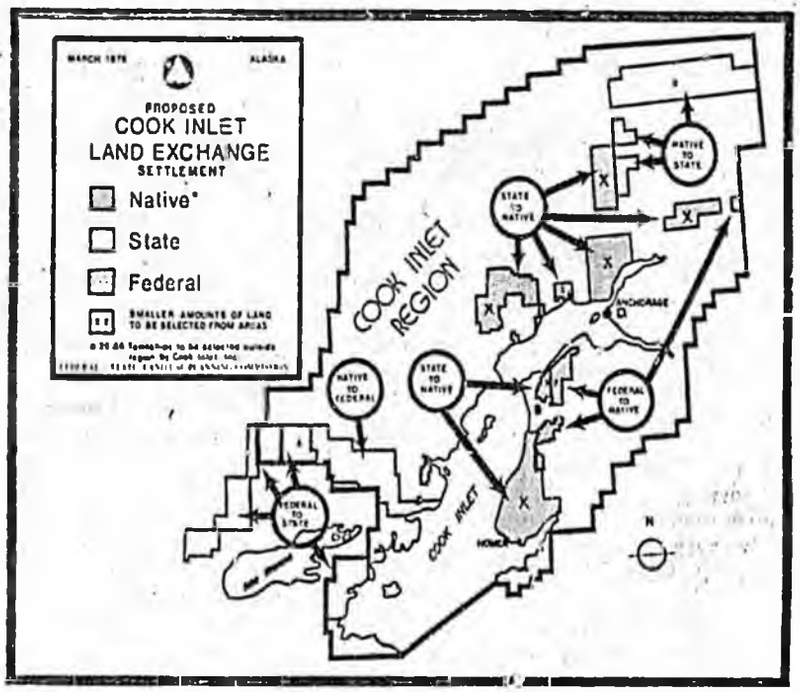

What's the land worth?

The state would give up an estimated $2 billion in potential mineral royalties, but about 40 per cent of that amount would not be realized for 100 years or more, U.S. Department of Mines personnel said in a mineral evaluation of the Cook Inlet land trade Friday.

About $196.9 million of the royalties that could be lost may begin to be realized during the next 20 years, the study by the Mines department said. Ninety-five per cent of the royalties would probably not commence for 20 years or more, according to the report.

THE MINERAL evaluation was one of several assessments prepared for study by the Federal-State Joint Land Use Planning Commission, which is making recommendations to the legislature.

Other assessments dealt with recreational lands involved in the trade, and timber and potential agricultural resources in the trade.

The Department of Mines assessment differs drastically from estimates prepared by Harold Gallilett, a consultant who has filed suit to stop the trade. Gallilett contended Alaska citizens would lose more than $5 billion worth of land and natural resources in the trade.

IN ADDITION to lost royalty opportunities, the Mines study says the state could forego $43 million in tax revenues from mineral properties around Lake Clark if the trade goes through. The state will gain about $300 million by acquiring land that can be leased for ore mining.

The Mines study also said oil and gas resources may be discovered outside known fields but inside the land area selected by the Natives.

government.

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• Home

(Continued from p
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"There is a lot of
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McKinnon said. "Th
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charter would be a gr
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HE ALSO SAID the redl
"to a certain degree" te
zoning decisions made
governments. "Banks c
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for single family homes
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contain nothing but apar
though the people doing
wanted a mix of differen
McKinnon said.

He said it is not reasona
to refuse loans to peopl
credit ratings just be
neighborhood has been
banks. Disclosure of this
would make it possible to
question, McKinnon said.

backed by panel

LAND SWAP BACKED BY PANEL

By ROSEMARY SHINOHARA
Daily News Staff Writer

The Joint Land Use Planning Commission gave its unanimous endorsement this weekend to the proposed Cook Inlet land exchange, and reported to the legislature that the negotiated agreement represents the best of several alternatives ways in which Cook Inlet Region Inc. could receive its entitlement.

The commission's report said probable foregone state revenues will constitute only a "minute fraction" of the annual state revenues of the future.

IF COAL royalties of $1.5 million annually are realized on the land that goes to the Native corporation, it would amount to one-hundredth of 1 per cent of projected state revenues in 1990, the report said.

The solution arrived at in negotiations by the state, the federal government, and the Native corporation also offers the least probability for protracted lawsuits, the report said.

Land use benefits, such as state participation in the Native land selection process, and the protection of the highly-populated southcentral region also occur because of the agreement, the commission said.

THE COMMISSION met Friday and Saturday, studying anlysis of the trade prepared by its staff from the perspectives of land use, economics, legal issues, the values involved in the trade, and the alternatives to it.

The chief negotiators for the three-way agreement spent a day testifying about it. The commission staff was preparing a report and other documents late Sunday to have them ready for consideration by the legislature today.

In its report, the commission said most legal impediments to the trade were removed by Congress. It remains for the legislature to waive requirements that such an exchange be based on equal monetary value, and to approve conveyance of subsurface title to the Native corporation.

WITHOUT SUBSURFACE title, the corporation could not extract minerals on the land it will receive.

The agreement reserved certain federal lands for state selection, including Point Woronzof, which the state wants to use to build the North-South runway extension at Anchorage International Airport.

A conflict may exist because the agreement said the land would be held for the state for parks and recreation purposes when it has been declared surplus by the federal government.

THE COMMISSION report said the conflict between the North-South runway extension and parks and recreation uses is recognized by all parties. It may be solved if the federal government eliminates the land needed for the airport before it conveys the land to the state, the report said.

On economic issues, the report said losses that the state will incur appear to be "exaggerated."

"When highly speculative gross asset values are converted to the 'net present value' of probable foregone revenues, the state's expected losses are minimal," the report said.

THE STATE'S future economic viability is largely unaffected by the trade, the commission said. When the land transferred to Cook Inlet Region is developed, the state will earn revenues through various means of taxation.

The agreement also protects state revenues from the Swanson River oil fields.

School board to vote on budget

By JIM BABB
Daily News Staff Writer

The Anchorage School Board tonight is scheduled to decide how much money it wants from the Anchorage Assembly in order to educate the 36,330 youngsters expected to be in area schools next year.

Most board members who could be contacted over the weekend expect the figure needed will be $102 million. That may mean a 1.25-mill increase in the mill rate for property owners. Property owners presently pay 7.45 mills for education. That could go up to 8.69 mills if the proposed budget is finally approved.

ANCHORAGE would still be one of the lowest educational mill levies in the Northwest, according to school district documents. Spokane, Wash., has an educational mill rate of 12.84; Portland, Ore., one of the lowest in that state, has

"The only way to reduce dollars now would be to reduce the number of teachers," Millett Keller, a school board member, said. "And I think it would be difficult to get the public to accept that."

"This is a clean budget," Heather Flynn, also a member, said. "Every dime has been scrubbed. There's not one bit of padding, we can justify every dime," she said.

SHE SAID the school board and the budget advisory committee had spent more than 40 hours going through all budget documents this year. Last year there was criticism of the board for not thoroughly analyzing the budget.

Approximately 35 new teaching positions are budgeted for next year. Most new teachers will handle the additional students expected. This year there were about 1,675 teachers

Inside today

I'll see you!

Dr. Terry Adkins, of Mountain Home, Idaho, waves go

...even the Cub ...which one of his two ...is a member.
...art identified the main concerns of Muldoon area residents as neighborhood "viability" and the cost of government services. He explains the first as a desire on the part of the residents to maintain and ...took to ...trees over ... — being out of service area budget.

Hart said a few of his constituents, who strongly supported unification in the September election, expected to see more savings reflected as a result of the merger. Hart said also some of his constituents are complaining about the strong mayor form of government.

myself."

Hart explained he calls the responsible municipal department and asks to be called back when the problem is resolved. "When you just refer the people themselves to the government," Hart said, "frequently there's no action." Other complaints Hart passes

...tisement for a planner ... former borough gover... He was then in Corvall... He holds an underg... degree in urban geo... from the Univers... Colorado and a mas... public administration f... University of Alaska ... married and has two ch...

-FDAS ANCH DN MARCH 15, 197[illegible]

Storm land trade finally completed

From Our Juneau Bureau

JUNEAU — The Cook Inlet land exchange ended its brief but stormy legislative life late last week when it received final Senate approval and prompt affirmation from Gov. Jay S. Hammond.

The bill was approved on reconsideration by a vote of 13-6 with one supporter on excused absence. An 11th-hour amendment which could have killed the bill by dragging it past the federally - mandated deadline was withdrawn after a compromise move put a strongly - worded "letter of intent" into the record.

SEN. Kay Poland, an opponent of the trade, offered an amendment she said was necessary to ensure that federal land at Point Woronzof to be given to the state actually could be used for construction of a North-South runway at Anchorage International Airport. She said that was necessary because language in the exchange document said the land was to be used for parks and recreational purposes.

But a letter on legislative intent was accepted instead. It says that, "Acceptance of the trade is based in material part upon the assurances by the Department of Interior that the transfer of land at Point Woronzof will be made for airport purposes."

"We have them on record, and have reaffirmed our contention that this is the intention of all parties involved," Gov. Jay S. Hammond said of the airport question.

"THE LETTERS of intent almost guarantee we can win any lawsuit necessary to protect the runway," Commissioner of Natural Resources Guy Martin, the state's lead negotiator, said after the vote.

The land trade is an arrangement between the state, Cook Inlet Region, Inc. Native corporation and the federal government designed to settle land claims in the Anchorage area.

Hammond took a position distinctly different from legislators — especially senators — who endorsed the plan with considerable reluctance. "I regard this agreement with some pride as an initiative of this administration based on its overall policy to take a leadership role in shaping land use and ownership patterns in the public interest," he said. He was mildly critical of legislators who complained they had been rushed to a decision, and said it likely was "a question of involving them at all.

"THERE were a great many legislators who would have been happy for the administration to wear the hat for the whole thing. It is controversial, and some of them would prefer not to be on record at all," Hammond said.

He said state involvement in the arrangement had "reduced to its irreduceable minimum" the "federal blackmail" which legislators criticized Wednesday. "It was a question of blackmail or grand larceny," he said. "With blackmail, at least we got something out of it."

Martin also said legislative distrust was misplaced, and said legislators may not have realized that land the federal government controlled in the swap was on the state's potential land selection list. "The chips the feds were playing with belong to us. We just decided to play our own hand," Martin said.

POLAND'S amendment caused a scramble in the Senate Thursday morning, as both parties recessed to caucus on the issue. Martin and Atty. Gen. Avrum Gross were on hand to lobby for the administration, and Cook Inlet Region Inc. President Roy Muhndorf was in attendance to watch the final proceedings.

Bill permits workers to share full-time jobs

JUNEAU (AP) — The House has given final legislative approval to a bill that would allow part-time workers to share some full-time state jobs.

House Majority Leader Mike Miller said splitting full-time positions would cost the state nothing and would be "particularly advantageous to working mothers."

Proponents of the measure contend other states which have split jobs between part-time employes have experienced significantly lower absenteeism, sick leave and job turnover rates in those positions.

Since job benefits would be divided on a pro-rata basis, Miller said, the change would result in no additional costs.

The measure, passed by a 31-1 margin Thursday, was sent to Gov. Jay Hammond for his signature.

SUB. COMM.
ON OIL + GAS
LEASING +
TAX policies

Subcommittee on Oil and Gas
Leasing and Taxing Policies
Minutes of the Meeting 6 November 1976

Chairman Croft called the meeting to order at 10:05 a.m. Attending the meeting were Croft, Representative Anderson, Representative Davis, Representative Gardner, Senator Huber, Representative Malone, Senator Poland and Representative Rhode. Also in attendance were Mr. Gregg Erickson, Director of Research for the legislature, Mr. Milton Lipton of Walter J. Levy and Associates, oil and gas consultants to the Legislative Council, and Mr. Jack Roderick, Deputy Commissioner of Natural Resources. Chairman Croft called the committee's attention to the minutes of the previous meeting which were approved by unanimous consent.

After a brief introduction, Mr. Lipton was called on by the Chairman to share with the members his views on several issues being addressed by the committee. He indicated that he would like to begin his initial statement with a comment on the issues raised by the Alaska corporate income tax and various pieces of legislation introduced during the last session to tax, in one way or another, the net income of firms producing oil and gas in the State. In his view, it is not difficult to discern why such legislation has been introduced: the allocation formula under which the existing corporate income tax operates is so obviously not "felicitous" to the State's interest.

One of the most important questions that must be addressed in developing any "net proceeds" or other net type tax, is whether the tax is to be "in lieu of" or "in addition to" the current corporate income tax, and --if the former--whether the companies are to have the option of deciding which tax applies. He noted that if no form of "back and forth credit" is allowed between the new net type of tax and the corporate income tax, that firms will end up paying mutliple taxes. The possibility of double taxation thus arises and Mr. Lipton indicated that he was confident that the legislature would want to carefully examine any legal questions raised by such an arrangement before passing it into law.

Such "double" or "multiple" taxation is avoided, however, if the "in lieu" approach is taken. Various possible options exist for the State, if it wishes to implement some sort of "back and forth credit". Lipton observed that these may themselves raise important legal questions which should, of course, be explored. From an economic point of view, however, this system has important advantages, he said.

Mr. Lipton also discussed the administrative burden that a net type tax might place on the government bureaucracy. While not underestimating such problems, he emphasized that he does not believe that these problems would be at all "overwhelming", as some observers seem to fear. On the contrary, he noted that as a practical matter the Department of

Revenue is already making a calculation of net income in the course of preparing its assessment of the so called "reserves tax". This tax requires, among other things, a calculation of the present value of the expected future income stream, which is roughly the same as the "net proceeds". It was easy to make these calculations since the Department of Revenue made relatively arbitrary decisions concerning such factors as expected prices, discount rates, and costs. Absolute accuracy is in no way required in these determinations, and in any case should be left to administrative regulations, not written into the legislation. He suggested that the legislature "Don't worry about pennies, worry about the hundreds of millions of dollars."

Senator Croft noted the difficulties in developing a statutory system of isolating income generated in Alaska, and asked, "Is the net proceeds approach best?" Mr. Lipton answered that in the context of the apparent legal problems, the net proceeds approach has, he understands, the advantage of being associated with the fewest legal problems. He pointed out parenthetically that oil companies have challenged the allocation formula elsewhere, particularly in consuming states where they work to the firms' disadvantage. Because the allocation formula was devised for manufacturing, its application to Alaska and oil production in Alaska is very disadvantageous to the State.

In response to a question from Senator Huber, the consultant noted that two approaches to eliminating "double taxation" are (1) a credit, or (2) abatement of an in lieu tax.

Representative Gardner indicated an interest in determining whether it was advantageous to the State to remain in the multi-state compact. Mr. Lipton responded that he would prefer not to answer that particular question believing that the Department of Revenue has a better answer. Senator Huber observed that perhaps resource producing states should simply forget about the retail type firms and direct its entire tax structure to focus on extractive resources. This was followed by a discussion of the impact of the multi-state compact on forest products for fish processing industries, in which Representative Malone noted that while such impact was quite important it was probably beyond the purview of this committee.

Senator Croft inquired how the existing income tax affects firms doing business wholely or mostly within the State, such as native corporations. Lipton stated that if such corporations are in fact in-state corporations, they do not escape any part of the 9.4% tax on net income, if they have any. In contrast, he observed that "it is very difficult to conjure up any mutli-state oil company doing business in Alaska that would pay a tax on Alaska generated income close to this figure."

Senator Croft observed that during the last session it was his understanding that Mr. Lipton had some reservations concerning the "net type" taxes that had been proposed. Mr. Lipton responded that these reservations concerned specific details of the taxes and indicated that much work had been done towards the end of the session to resolve the pro-

blems. In any case he believes that such reservations can be eliminated and suggested that the legislature need not be too specific in such matters as the accounting principles to be used in calculating the tax.

The question of the severance tax was raised by several legislators and discussed at some length. Mr. Lipton indicated that the next session of the legislature would be an appropriate time to reconsider the severance tax. Any increase in the tax should be modest however, and in line with the tax imposed by Louisiana or other states. He recommended that any increases in the tax should be at the higher productivity steps and that some reductions might be order at the lower productivity steps, i.e. for wells producing less than 300 to 500 barrels per day. He once again called attention to the perverse effect of the cents per barrel approach on Cook Inlet oil and referred to his earlier report which discussed this point in detail. Senator Croft asked if there had been any direct effects on Cook Inlet production from the escalating cents per barrel tax . "Not yet," replied Lipton, who went on to indicate that such effects could be expected in the future though. He emphasized that the impact would more likely be on development decisions rather than exploration decisions. During the course of the discussion it was determined that none of the proposals introduced during the last legislative session to increase the severance tax (as a percentage of value) would have raised it to the level already reached (as a consequence of the cents per barrel approach) in relation to some Cook Inlet production. Senator Huber expressed the view that any changes in the severance tax proposed by the subcommittee should incorporate changes designed to eliminate the perverse effects pointed out by Mr. Lipton.

Senator Croft inquired as to the current status of the oil industry in Alberta. Mr. Lipton stated that he had just come from that province and had discussed oil policy there with high officials. Both oil and gas production are highly profitable there, and incentives for further exploration exist in the form of high prices and direct exploration subsidies. The industry has had a particularly good sucess rate in its gas exploration. This is offset partially by a high "royalty", i.e., tax, rate, but that oil industry interest remains high. Senator Huber inquired as to the effect of the "Alberta Heritage Fund" (something similar to the planned "permanent fund") and was told that to Lipton's knowledge the fund had no discernable effect on oil industry interest or activity.

Representative Rhode inquired as to the effect of a high royalty without a severance tax and was told that in Lipton's view there would be no difference. He observed, however, that the thrust of Representative Rhode's question appeared to be "How can we restructure leases to reduce negative incentives?" The answer to this question, Mr. Lipton indicated, would probably lie in a revision of the lease terms, perhaps including the offering of net profit leases in futures sales, with the state's interest being carried by the oil companies. This should be associated with a work obligation, he added.

There followed an extensive discussion of leasing policy in which Lipton emphasized the need to give the Commissioner of Natural Resources

flexibility in setting the leasing terms. The consultant observed that the greatest uncertainty now facing firms acquiring leases is not the geological or transportation or political climate uncertainty (at least in Alaska) but rather their uncertainty with regard to price.

In the course of an extensive colloquy between Mr. Jerry McCutcheon (member of the public attending the meeting) and Mr. Lipton, related to the question of entitlements, the importance to Alaska of FEA treatment of Alaska oil was emphasized. Mr. Lipton indicated that it would be advantageous to Alaska to have as many possible outlets for its oil as possible, and thus it would be advantageous to the State to have both the northern tier and California-Texas oil pipelines constructed. However, he cautioned the State to be very careful about taking sides in arguments over which line should be approved first.

In addition to the matters discussed above, Mr. Lipton spoke at some length on the effect on Alaska's revenues of the final destination of Prudhoe Bay crude. This discussion was reported quite extensively in an article in the Sunday, November 7, issue of the Anchorage Times. This article is attached hereto and upon approval by the committee will be made an official part of the minutes of this meeting, along with another article relating more generally to the items discussed above.

Toward the end of the meeting Senator Croft instructed the staff to draft legislation to tax the "net proceeds", following closely the comments of Mr. Lipton, and asked that if at all possible this legislation be available by mid-December or earlier if possible.

Senator Croft also asked the staff to arrange for a meeting between Professors Zeifman and Ainsworth, consultants to the committee on corporate income tax matters, and Mr. Lipton.

Representative Malone moved and asked unanimous consent that his motion from the previous meeting concerning the allocation of $20,000 to the Department of Revenue (see minutes of meeting of October 23) be renewed. After some discussion, which it was noted that there were certain conditions attached to this allocation, the motion was adopted by unanimous consent.

Chairman Croft indicated that the next meeting of the committee will probably be sometime in mid-December but that an exact meeting date will not be set pending further work by the consultants and staff.

Prepared by Gregg K. Erickson
November 10, 1976

Lipton:

Alaska Isn't Getting Fair Tax Share

By SUSAN ANDREWS
Times Staff Writer

Consultant Milton Lipton said ere yesterday the state of Alaska is ot receiving its proper share of income tax from oil and gas.

He told the legislature's Interim Committee on Oil and Gas Taxation nd Leasing Policy that a net proceeds tax is the "most desirable" way to separate out income earned ere.

Lipton pointed out that oil companies are subject to Alaska's 9.4 er cent corporate income tax. But Alaska is a member of the Multistate Tax Compact, in which income s apportioned to the various states. There are "gross inequities"in the amount of income tax paid to Alaska because of that apportionment. If income is not directly realized within he state, it eludes identification, he said.

He said a net proceeds tax, a tax n lieu of the income tax, would avoid legal obstacles resulting from Alaska's membership in the compact. The net proceeds tax is a tax on income from oil and gas properties, after certain allowable expenses have been deducted.

Lipton said the net proceeds tax would result in the oil companies paying more income tax to the states than at present. Alaska would not simply receive more of the pie. If it results in double taxation, then he said, that is a matter for the oil companies to work out with the other states who are receiving a larger share of income tax than is equitable.

An important aspect of in-lieu taxation, he cautioned, is a provision for crediting it against a company's corporate income tax.

State Rep. Terry Gardiner asked whether the same inequities would apply to income taxes paid in Alaska

Legislative Research director Gregg Erickson said it is his understanding that one of the largest Japanese-owned forest products companies has never paid any income tax.

Rep. Hugh Malone, D-Kenai, said those questions need consideration by the legislature but "are beyond the scope of this committee."

The net proceeds tax was one of three tax proposals introduced during the last session of the legislature on which no action was taken. Sen. John Huber, D—Fairbanks, said yesterday the net proceeds tax will be reintroduced, along with an increase in the severance tax, to bring Alaska in line with Louisiana, which has a 12 per cent tax on gross production. The third tax proposal, also expected to be considered again, is an "excess value surtax," or "windfall profits" tax aimed at Prudhoe Bay production.

Lipton, who serves as adviser to a number of oil companies as well as the governments of Alaska, Alberta and Indonesia, advised the committee that it is appropriate for the legislature to review the severance tax now.

"If there is an increase, it ought to be moderate," he said, "not out of line with the top rates in other states. And it ought to retain the idea that the severance tax is related to well productability."

Alaska's severance tax now ranges from 5 to 8 per cent, with the highest-producing wells paying the highest percentage. Lipton suggested that Alaska increase the percentage at the top and lower it at the bottom, so that marginal wells would not be discouraged from production.

Lipton was asked how the net proceeds tax would affect native corporations.

He said if their activity was conducted solely within Alaska, they would be directly subject to the 9.4 per cent corporate income tax. He pointed out that rate would apply to all their income, after subtracting losses. If the state goes the "in lieu" route, oil and gas income would be segregated from other income and losses from other activities could not be subtracted.

Committee Chairman Sen. Chancy Croft, D-Anchorage, asked if Lipton could have suggestions for the "in lieu" approach by mid-December, for the committee's consideration. He said that would be possible.

Regarding the severance tax, Lipton said his firm, Walter Levy and Associates, did not endorse the cents-per-barrel base which the legislature adopted. He said in the case of Cook Inlet oil production, the cents-per-barrel clause has resulted in a steadily-increasing tax burden, while the price of oil has been held rig[illegible] price controls. He said a 1,00[illegible]arrel-a-day well in Cook Inlet now pays 23.6 per cent severance tax.

If the legislature retains the cents-per-barrel formula, Lipton suggested that it be structured so it doesn't retain the present inequities.

"The severance tax belongs in the total Alaska tax package," Lipton said, "but it ought not to be the determining tax in Alaska's income from oil and gas. If it were, that could have an adverse effect on exploration and development."

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Oil To Japan Might Be Wise

Shipping Prudhoe Bay crude oil to Japan in exchange for imports of middle-Eastern oil may well be an interim solution to the problem of a West Coast oil surplus when the trans-Alaska pipeline goes into production, according to the state's petroleum consultant Milton Lipton.

At a meeting here yesterday of an interim legislative committee, Lipton said the preferred destination for Prudhoe Bay crude oil is the Midwest, but pipelines to the Midwest are several years away.

He estimated that oil carried by tanker to British Columbia and then by pipeline to the Midwest would result in a wellhead price only 60 cents less than to Los Angeles. Prudhoe Bay oil shipped by pipeline from Los Angeles to Texas would bring a wellhead price about $1.28 less than Los Angeles, and by tanker to the U.S. Gulf Coast, $1.43 less.

Lipton said that Frank Zarb, head of the Federal Energy Administration, has declared that under no circumstances can he foresee the federal government allowing an exchange with Japan. That is understandable, Lipton said, because if the export were allowed, oil companies would lose the incentive to build pipelines from west to east in the U.S.or to make changes in West Coast refineries to handle the higher sulphur Prudhoe Bay oil.

The trans-Alaska pipeline authorization bill forbids the export of oil to Japan without the President's consent. Lipton thinks that approval might be forthcoming if the exchange were for specified volumes of oil over a limited period of time, and if the Alaska oil were carried on U.S. flag tankers.

A third requirement, he said, might be that for barrels of oil exported, a specified number of barrels of oil must go into the nation's strategic oil reserve. If this were a quid pro quo for shipping oil to Japan, it would mean the oil "doesn't really leave the U.S.," he said.

Japanese refiners have a tremendous range of refinery capacities, Lipton said, with a lot of de-sulphurization equipment because they handle a lot of "cruddy crude" from the neutral zone of the Middle East.

Lipton said the anticipated West Coast surplus is the result of a lag in demand over the past 2½ years, an increase in oil prices and the recession. Plus, he said, the U.S. has abandoned restrictions on oil imports, and imports will continue after Alaska crude is available because the California refineries and markets are better suited to imported oil.

DR. TUSSING: I just have one comment. In my opinion the report of the administration's Gas Pipeline Task Force is an exceptionally thorough, fair and objective review of the relative merits of the three competing gas transportation systems. In view of the political sensitivity of the issue and the compulsion that agencies generally have to find the most favorable arguments for the policies adopted, I think that this is a really admirable document.

There are only a few points in the report on which I would have a different emphasis and there are a number of assumptions in Dr. Knudson's report that I think were biased in favor of the kind of answer that supported the policy. But I don't think these are crucial to the main conclusions of the Task Force report, and when I start my presentation I'll summarize what I think are the principal conclusions and what the implications of those would be.

SENATOR RADER: Unless the Committee objects, why don't we go ahead and listen to your presentation and then open questions to both of you. Would that be appropriate?

DR. TUSSING: Yes.

SENATOR RADER: Is there any objection to that procedure, Committee? Fine.

DR. TUSSING: Okay. I didn't come with a prepared statement. I have some fragments of things, two of which I would

like to introduce into the record. One is -- let me back up for a moment and identify myself, as you requested. I'm Arlon Tussing. I'm a professor of Economics at the Institute of Social and Economic Research at the University of Alaska. I have been affiliated with the University for twelve years. I have also served as chief economist of the U.S. Senate's National Fuels and Energy Policy Study under Senator Jackson and continue to serve Senator Jackson as an economic advisor on energy and natural resources.

During the last year I have also served as an advisor on oil and gas issues to the State of California, the Provinces of Nova Scotia, Ontario and British Columbia. I have served for a little over a year on the Royalty Oil and Gas Development Advisory Board, during the period of which the initial negotiations were -- took place on these contracts. I have given consideration in a number of forums and for a number of agencies to various aspects of the Alaska gasline question.

There are a great number of issues I would like to comment on, if I have time. I realize your time is limited and I'm going to try to confine myself to some of the high spots and then let you proceed.

SENATOR RADER: You have two documents that you wanted entered as exhibits?

DR. TUSSING: Yes.

SENATOR RADER: Would you identify those for us?

DR. TUSSING: One is an article headed "An Inkling of the Long Journey", published in "Northern Perspectives", which is the newsletter of the Canadian Arctic Resources Committee. This was published only last month but I wrote it in June. So to the extent that there is anything dated in it, you can understand that.

SENATOR RADER: That would be Exhibit No. 11, according to my records. Is that correct, Recorder?

DR. TUSSING: Yes. Oh.

SENATOR RADER: All right.

DR. TUSSING: The second paper is entitled "Natural Gas Supply Outlook for the West" and it is a summary of my comments at a workshop on economic growth in the West in Los Angeles in August.

SENATOR RADER: And that will be Exhibit No. 12.

(Whereupon Exhibits 11 and 12 were duly marked)

DR. TUSSING: The most important conclusions of the State Task Force report are generally consistent with every other important study and with intuitive common sense, and they are the following: Firstly, that El Paso's Trans-Alaska pipeline LNG tanker system would, if it could be approved, financed, and built and operated in the manner proposed by its sponsors, result in the greatest net revenues to the State treasury and the

greatest increase in Alaska gross product, personal income and population. The Alcan systems impact would be second in these respects and Arctic Gas third.

Secondly, with the Arctic Gas system, if it could be approved, financed, built and operated in the manner proposed by its sponsors, would result in the lowest gas transportation costs to the Lower 48. In this respect, the Alcan system seems to be second best and the LNG system worst among the three.

The Task Force report makes one other crucial point but without the emphasis I believe it deserves. In view of the respective routes, design and construction plans, the Alcan system seems to be least vulnerable to cost and schedule overruns, and Arctic Gas the most vulnerable, with El Paso somewhere in between.

Because of the questionable viability and the financing problems of any transportation system for North Slope gas, the prospect of substantial overruns may be the most critical economic issue in choosing among them.

Moving to the contracts for a moment. I intend to get back to the problems of financing. I make no recommendation on whether the Legislature should ratify these contracts. The members should understand, however, that there is no amount of propaganda for lobbying by Alaska or by the three purchasers which will produce a

decision in favor of an LNG system unless Canada makes it clear than an overland pipeline system will not be licensed or that Canada will not be able to come to a decision in the foreseeable future.

I personally expect an unbroken chain of decisions in the United States in favor of Arctic Gas by the FPC staff, Judge Litt, the Federal Power Commission and President Carter, based upon the record in the FPC hearing and the investigations of other federal agencies. I do not mean to imply that Arctic Gas is certain to be approved and to be able to build its system, but if the Arctic Gas momentum is to be broken, it will not be the result of any domestic politicking, but of some objective development. For example, a clear signal of Canadian intentions one way or another. While it is remotely possible that El Paso or Alcan might get an important endorsement somewhere along the line, what is almost inconceivable is that the United States Congress would overturn a presidential determination in favor of a Canadian overland pipeline system to substitute its judgment in favor of an LNG system.

The manifest superiority from a national point of view of the overland pipeline system as available is so overwhelming and the regional interests in the construction of such a system in preference to an LNG system is so

overwhelming that the number of Congressmen, the number of State Utility Commissions and the number of Governors that the purchasers will be able to move on this is only a small time fraction of the existing lead that Arctic Gas has in this matter.

I think that it is instructive that in El Paso's principal market area that there is virtually no support for its project and in fact great skepticism about El Paso's project for a number of reasons, not least that the gas distributors do not want to be exclusively dependent upon El Paso, as they would be, for all the gas entering their market area. And secondly, they don't want the State of California to be exclusively dependent on a single point for the delivery of their gas, a point which could be interrupted by, for example, a fire at Valdez, which would leave them without any gas supply whatever as their existing supplies would have been displaced eastward into markets or, for example, in the Tenneco and Southern systems, for example.

There is simply no possibility, in my judgment, that Congress would endorse an LNG system. Particularly in the face of the cold wave that has now confronted the Midwest and the East and which will have reinforced its determination to get direct delivery of gas, and in view of the developing Westcoast glut of crude oil which is

retrospectively viewed in Congress as the result of the fact that they approved the wrong pipeline in the first place for the oil.

These are circumstances that -- there is nothing which the State of Alaska can do to change. I believe it is clear the United States will favor an overland pipeline through Canada. It also seems likely, that rightly or wrongly, the Federal Power Commission, the Administration, and Congress will accept Arctic Gas argument that an early attachment of the Mackenzie reserves is in the United States' interest and that the Mackenzie route has significant economies of scale compared to the proposed Alcan system. But, the decision will in fact be made in Canada, not in the United States. The United States will accept any overland system that Canada is willing to build in preference to any alternative system.

Canada's orders of preference between the Mackenzie and Alcan routes are not so clear. There are a number of reasons why the Alcan system may make more sense to Canada and with your permission I would like to read a couple paragraphs of my article in "Northern Perspectives" on some of the Canadian reasons for favoring an Alcan system.

"The probable reception of any Alcan proposal by Canadian authorities has been a most difficult issue to

forecast. A major appeal of the Arctic Gas project is purportedly its early (if not necessarily more economical) attachment to the Mackenzie reserves. Without this feature, it may be asked, what is the advantage to Canada of accommodating the United States in moving Alaska gas?"

"The attachment of the Mackenzie reserves may, on the other hand, be seen as a major disadvantage of the Arctic Gas system, from at least one Canadian standpoint. There is no particular reason why Canada should not accommodate the United States with a transit line across Canadian territory; after all, a substantial portion of Canada's oil and gas supplies transits the United States. There would seem to be little objection in Canada on nationalistic grounds to American gas moving in either an American or a Canadian-owned pipeline across Canada. The Mackenzie project, in contrast, raises the issue of an American-dominated consortium developing an important frontier area of Canada. The fact that an early MacKenzie connection is being justified in the United States by the (doubtful) proposition that it would lead to greater Canadian exports to the United States aggravates its potential difficulties in Canada. Both its timetable and logistics would be dictated by the convenience of the American interests. The native claims and environmental complications of this route are well known."

And incidentally, I expect that Justice Berger, who is the commissioner for the Canadian government in examining native claims and environmental implications of the Mackenzie pipeline, will come out strongly against the Arctic Gas proposal and against any major pipeline development in the Arctic pending the settlement of the native claims and the resolution of some presently unresolvable environmental issues. He will point out, I believe, that neither of these objections is nearly so strong with respect to a pipeline through the Yukon Territory along the Alcan route.

"The 60 trillion cubic feet of proved reserves in the western provinces", I think it's now about 62 trillion cubic feet in Alberta,"are enough to sustain the expected growth of Canadian demand plus present export" commitments "for about ten years. This would be the case even if there were no further discoveries" in Canada, "but recent exploratory results in Alberta have been rather encouraging, more so in fact than in the delta area. For this reason a decision on an Arctic pipeline carries much less urgency for Canada than it does for the United States."

In other words, Canada does not need a pipeline connection to its frontier areas for ten or eleven years even if there were no further -- to be no further discoveries in Alberta or British Columbia.

"More importantly, however, a decision today in favour of immediate development of the Mackenzie Delta-Beaufort Sea region can be seen to prejudice whether that region or the Arctic Islands (where recent exploration seems to have been more successful) shall be developed first. Either project could strain the capacity of domestic capital markets so that simultaneous construction of the two major pipeline systems under Canadian majority ownership is almost out of the question."

And I go on to say that it is not obvious which of these considerations will finally come to play, but "A decision in favour of Arctic Gas would" "be a reluctant one". It would have to be in the face of a firm decision by Justice Berger who in a sense occupies a similar position as Judge Litt in the procedures in the United States, and it "would be opposed by many quarters within the Canadian federal government, by several provinces and by a large body of Canadian opinion."

As you probably know, the Trudeau government faces an election no later than the fall of 1978. The liberal party is in great trouble, Trudeau is very unpopular at the present time and to run over the Natives and the environmentalists at this time in favor of an Arctic Gas pipeline is probably unlikely, it would be a very impolitic. So there is on the other hand and I have absolute

confidence in this, there is a determination at the highest levels of the Canadian government to work out some joint accommodation with the United States for transportation of oil and gas and through exchanges of oil and gas. And I believe that the Alcan proposal offers a very important way out for the Canadian government of its way out of its dilemma.

Turning back to our contracts and the prospects of the Trans-Alaska Pipeline, the only serious substantive argument for the El Paso system from a national standpoint, the only one that has any credibility is that Canada wi[illegible] not license an overland pipeline under terms acceptable to the United States. Only Canada can prove or disprove the truth of this proposition and the Administration and Congress are going to wait for this.

Now the -- I do not want to say that there is no chance for a Trans-Alaska pipeline. There is no chance for a Trans-Alaska pipeline so long as there is a chance of a Trans-Canada pipeline and there is nothing that Alaska or El Paso or any of the purchasers can do to influence the decision from the United States in that respect.

The corollary proposition advanced by El Paso that the Canadian government is incapable of granting acceptable terms for an international pipeline because

its treaties don't bind the provinces is without merit and can be easily dismissed. The premieres of both British Columbia and Alberta have expressed their intention to lay this question to rest to the extent that the Canadian federal government cannot bind the provinces. The provinces have independent authority to make treaties and those of you who are familiar with the Columbia River treaty will recall that it is a treaty between -- or among the United States, Canada and the province of British Columbia. Both Premier Lougheed of Alberta and Premier Bennett of British Columbia have made it absolutely clear that they have no objection to joining in any protocol providing for nondiscriminatory treatment, taxation, regulation, and for that matter a complete quitclaim of regulatory jurisdiction over a transit pipeline that carries United States gas. So I think that that issue is totally a red herring.

The scenario I see developing on the approval of the pipeline -- or on the determination of a pipeline route is that the Federal Power Commission will find in favor of Arctic Gas, along the same lines as Judge Litt's finding, on the basis that it is environmentally superior on the basis that results in lower cost to consumers, the basis it can be built faster, that it is more easily expansible, and the whole range that the Federal Power

Commission will find it superior in every respect.

At about the same time the Berger C. ission findings in effect vetoing Arctic Gas will come out in Canada. Now if you'll recall the language of the Alaska Natural Gas Transportation Act, it says the presidential determination -- the FPC recommendation, the presidential determination shall be made without respect to whether Canada has reached a decision on this.

What the FPC decision for Arctic Gas and the Berger decision against Arctic Gas will trigger is negotiations between the United States and Canadian government and among the var.-us proponents of gas pipeline systems to see what kind of system can -- is agreeable to all the parties. And it seems to me that the system that is going to be most acceptable to all the parties is a system along the Alcan Highway but departing in some degree from Northwest's and West Coast's strategy for that. In other words it would be a higher capacity pipeline than envisioned by the sponsors. As -- one combination would be to use El Paso's engineering and pipeline design for the northern part of the route. El Paso believes that with high pressure, with 1670 psi they can move up to 3 1/2 bcf a day through a 42 inch pipe. I think that a 42 inch pipe is one of the strongest elements in the Alcan design because that is

the kind of pipe that can be rerolled in existing North American facilities.

A disadvantage of the Arctic 48 inch scheme is that it requires the building of a new plant by Stelco for the production of that pipe and it introduces another -- just another of a whole series of uncertainties into what I believe is an oversized -- already an oversized project.

So returning again to the contracts, I do not see what the State accomplishes in terms of the advancing of its goal by selling the gas now. I will -- in response to questions I'd be willing to elaborate on what I think the significance of these contracts are, but I would like to go ahead and spend a couple minutes on what I think some of the problems of building and financing an Arctic Gas pipeline are, regardless of who built it.

There -- these projects are enormously risky no matter what the sponsors and their financial advisors say. Their ability to be financed in conventional -- by conventional private means is extremely suspect. And that -- I'm sure that Whitewell's representation to El Paso and the financial advisor's representations to Arctic Gas and to Northwest are qualified in the same way. That is, if you get as much gas as you say you are going to move through this system and if your costs are the

costs that your engineers say you will have and your schedule is what your engineers say you can accomplish and if you do get all the necessary approvals, then the financial -- and you do get the all events full cost of service tariff from the Federal Power Commission and the state utilities that govern the distributors -- or the customers of the system, then you can finance this through convencional project financing.

What I would question is whether all those -- whether all of those conditions are certain enough that the insurance company's pension funds and the other institutional investors that have to buy this pipeline would be willing to risk what may be Ten to Twenty Billion Dollars in financing.

In the first place, there is uncertainty about the gas supply. Now the -- I believe the State's reservior engineers project a probable production, permissible production, or optimum production of about 2 bcf a day. Now that is about or perhaps below the minimum threshold of Arctic and El Paso. That is about the design threshold for Alcan.

Now it is conceivable that after two or three years experience in oil production the Alaska conservation authorities may conclude that that rate of production is not in the State's interest, that the loss of oil -- the

value of the oil foregone by that production is greater than the value of the gas produced. Nobody knows what this is going to be. The fact that all the producers and the State of Alaska and the gas purchasers all believe that they can produce say two bcf a day safely isn't good enough for the lenders. They have to have some notion of what the likelihood -- the downside likelihood is. And the downside likelihood -- if there is only a ten percent chance that production will be 1.6 bcf per day and 1.6 bcf per day is not enough to guarantee the payment of the debt on this pipeline, then you just won't be able to go into the capital market. We have the problem of delays in capital cost overruns. Actual construction costs may exceed estimated costs by substantially more than they affect general inflation.

Two years ago, with the help of the Library of Congress, I did some research on this and was unable to come up with a single large custom engineered construction project in the United States over the last ten years which had not exceeded its initial engineering cost estimates by a factor of less than two. And the experience in North America with big custom-engineered construction projects has been that they typically cost two or three times their original projections, even including an allowance for inflation. The cost estimators are like

accountants and they prefer a solid, empirically based figure. That is, so many cubic yards of cement at so many dollars a cubic yard to a realistic figure. "They do attempt to project the increase in anticipated labour rates and in the prices of specific materials", and the inflation rates for those specific materials, "but they don't take into account the fact that huge projects, particularly if they involve new technology", as both systems do, both Arctic and El Paso does, "or a remote construction site," and this would apply more to Arctic, "usually don't work the first time around, nor that both the purchaser and the licensing authorities change their minds several times in the course of construction. The cost engineers don't appreciate that such projects are usually clumsily managed and are subject to a number of re-organizations during their design and construction. They don't allow for the fact that materials and equipment are always late and often mis-specified or defective," and that such "enterprises" "suffer not normal, but abnormal labour cost increases. Because of their size and urgency, they are especially vulnerable to wage pressure," and "to featherbedding, and" also "to racketeering."

And I needn't go into great lengths on the problems of the Trans-Alaska oil pipleline, which will --

whose costs will exceed by ten times the initial estimates by the sponsoring companies. I do not project a ten time overrun for Arctic Gas but I think that a doubling of their present projections would not be an unreasonable anticipation in view of the history of large projects in North America. Let's assume that Arctic Gas or that El Paso's project would cost Twenty Billion Dollars and that it would have to be paid for in twenty years and "assume that the investors should receive a 15 percent pre-tax rate of return on total" investments. "Under a conventional utility accounting scheme, the project would need a first year cash flow of four billion dollars just to cover its fixed costs. On a discounted cash flow basis" which is a more rational financial way of looking at it but is not customary in utility accounting, "the annual fixed charge would be about $3.2 billion."

But "with a throughput" of about "a trillion cubic feet" a year, that is about three bcf, "we are talking" about "$3.20 to $4.00 per thousand cubic feet" for transportation costs alone. If less gas can be delivered, if we are talking about two bcf a day, we are talking about Five to Seven Dollars a thousand cubic feet. Now "this charge doesn't include the cost of developing the gas fields, any return to the producers," to the royalty owners, any "operating costs or" any "costs of distribution."

Now both El Paso and Arctic insist that the consumers will accept any price because of the rolled in feature. Now not everybody agrees with this and in fact none of the government sponsored studies -- the Aerospace -- FEA study estimated that "no market for Prudhoe Bay gas would exist in 1985 at a 'city gate' price exceeding $2.40 per million BTU (in 1975 dollars). The Interior Department's study reaches a similar conclusion." Now this price you are almost certain to get, "even without implausibly large cost overruns or shortfalls" in the gas distribution system.

Now, "one assumption of" these "studies mentioned" "is that natural gas" prices have been decontrolled, "and that the Alaska gas is" therefore "priced incrementally."

Incidentally, the -- I don't want to spend a lot of time on it but it is not clear whether deregulation would increase or reduce the price of Alaska gas. I think there is a very strong case for expecting that it would make Alaska gas less valuable for a number of reasons. Deregulation would increase the price of gas in the Lower 48 and therefore reduce consumption in the Lower 48, increase production from the Lower 48 and reduce the gap -- the shortage.

It would also reduce the amount of low priced gas that the pipelines and distributors get which they can

roll together with expensive gas to come out with a price that satisfies their consumers. Now I don't want to predict absolutely that deregulation would make Alaska gas less valuable, but I think that that's the probable effect, that by easing the gas shortage in the Lower 48, they make it less willing for gas distributors to pay more for that gas than it is worth at the burner tip.

What it is worth at the burner tip to the average consumer is roughly the price of fuel oil. Now there is some consumers that will pay substantially more and some who will pay only the price of coal or residual oil and so on. But the average consumer is competing with fuel oil. In a deregulated market, after a few years, you'll find that gas distributors will not pay more than that for gas because they don't have any cheap gas to average it with.

So, anyway there are market risks -- there are gas supply risks, market risks, cost overrun risks, and of course you know about the political regulatory and other institutional issues, things like native claims in Canada, the fact that virtually nobody seems able to get any sort of terminal in California. I have looked at this problem again for several different agencies and I wouldn't count on any proposal which requires a major terminal in California at this time until there is a

substantial change in the internal institutions of that state or a substantial change in federal-state relationships.

It may be that there is just no way to put a major terminal in California. Anyway you have these problems, so you have the -- so these risks generate the financing problems.

"The financial consequences of the risks I have listed are magnified by the fact that neither" El Paso nor Arctic "can be built in smaller self-sustaining stages." Each is a total "integrated system which" will not flow any gas or flow any cash until the whole thing is completed. "Most of the capital invested", that is Ten to Twenty Billion Dollars or more, will be exposed to all the risk factors for the entire planning and construction period.

Now private lenders "simply will not accept the risks of this sort, and neither project's sponsors are financially large enough to carry them, even if they were willing to do so", and they are not willing to do so. All of the projects propose an "all events" tariff in which the sponsors would be guaranteed a return on equity, as well as a return to debt service, whether or not any gas is ever carried by their project.

El Paso proposes to use federal loan guarantees

and Arctic has talked about federal indemnification for overruns. But, neither the "full cost of service all-events tariffs" nor government guarantees are presently in the works and none of these projects can be financed without some sort of government backup. And this is something that I think is independent of the numbers you come out with on any particular thing.

The financing schemes are very conditional and I think that all the sponsors are -- expect they will ultimately have to go to the federal trough either for a subsidy or a loan guarantee, which is the same thing as a subsidy, because they will not be able to produce the cash flow that they project and they will have overrun.

The President, when he makes his recommendations, or the President in his negotiations with Canada, are going to have to come up with something that can be financed.

Now, turning to Judge Litt's conclusions on this, Judge Litt is in effect asking somebody to build an over-sized pipeline on speculation. He is saying that in view of the vast amount -- the vast potential of the North Slope, all the way from Pet Four through the State leases, through the wildlife range, through the Beaufort Sea and the Mackenzie Delta, there may be a vast amount of gas and it is wasteful to build a minimum scale system as Alcan

proposes, simply to handle most economically the gas that we know for certain can be produced. But, he is asking somebody to take the risk and the somebody is basically the investment community that is not going to take the risk, even if the probability that the throughputs necessary for Arctic Gas are -- say even if it is a ninety percent probability that Arctic Gas is viable.

Then he turns around and says,"well, the oil companies ought to take this risk." Well, the oil companies are not in this business. The oil -- he is asking the oil companies to put Three, Four, Five Billion Dollars on top of the Four to Seven Billion Dollars it is going to take to develop the field to produce the gas. He is asking them to put it -- to take money that they could use in high return risky ventures and put it into an operation that is going to have a public utility rate of return, where their going to be constrained to make nine percent or something like that. And it just isn't going to happen. It is an appeal to patriotism or altruism or something like that that is completely unrealistic.

If Judge Litt and the Federal Power Commission and the President want a big diameter, high pressure pipeline from the North Slope, they are going to have to get the American people to pay for it and to accept

the risks through the political system and there is nothing wrong, say with the principal of an all events tariff as long as the probabilities are good, as long as consumers have a substantial chance of benefiting, why shouldn't the consumers take part of the risk? It is not going to happen that way. The Public Utility Commissions don't think the risks justify it, they don't like the idea of socializing private risk in a situation where the investors are guaranteed their return while the consumers and the public take -- have the downside risks. So, when the President of the United States and the Premier of Canada get together to figure out what the system is going to be, they are going to have to look hard at the financing and the other system.

Now, looking at the faults of the Alcan system, there is something from the point of view of the Federal Power Commission. It seems to me that this principal fault can easily be resolved. It is desirable to have a forty-two nch pipe because that pipe can be built and can be rolled in present mills and its -- the technology is a lot more practicable.

El Paso believes that it can run a lot of gas through -- a lot more gas at a higher pressure through the pipe. If the Alcan people were granted a certificate on the condition they would put in a heavy guage pipe.

which could operate with sixteen hundred seventy psi, if the gas were available, by adding more power the incremental costs would be relatively small.

I think these things can be settled but they probably have to be settled in negotiations. It seems to me in conclusion that none of the systems as presently proposed and none of the financing arrangements are presently viable, and that we have yet to see the last of the combinations and permutations. I would say, however, that there is nothing the State of Alaska can do to advance a Trans-Alaska Pipeline LNG system within the U.S. political system. If there is going to be such a system, it will be selected by the Canadians because of their inability or unwillingness to authorize the prompt construction of an overland pipeline by one route or another.

SENATOR RADER: Representative Meekins?

REP. MEEKINS: I don't know exactly where to begin.

SENATOR RADER: Maybe a motion to adjourn. As a matter of fact we should have a recess motion. Let's take a recess here for ten minutes.

(Whereupon the hearing was recessed at 4:00 p.m. and reconvened at 4:15 p.m.)

SENATOR RADER: The Committee will come back to order. During the recess we had several conferences and we

decided that no matter what we did, we would have lots of authority for doing it. So, and that includes nothing, I guess. As I recall, Representative Meekins, you had the floor when we recessed.

REP. MEEKINS: Thank you, Mr. Chairman. I hate to try to characterize what you said, but as I understand it, you say that while it is clear that the El Paso line provides great benefits to the State, that in your view it seems very clear that the contracts that were -- that are the subject of this -- of these committees are irrelevant to the decision upon which -- about which gasline will win final approval and that the actual decision will be made in Canada. If that is the case and if it is as clear to you as it seemed in your presentation, how do you explain the fact that administration experts say the opposite?

DR. TUSSING: Well, I think that may be more your speciality than mine. The purpose of these contracts is essentially an internal Alaska political purpose. Suppose you were the Governor and you had become -- and you were under assault from OMAR and the Anchorage Times and from the Anchorage business community for not having given one hundred percent support to everything that the El Paso enthusiasts wanted. And suppose as Governor you were also convinced by your own investigations that El Paso

had very little chance and you're -- you would probably be concerned that when Arctic Gas got the final nod that these people would point the finger at you and say that it is only because you didn't sell the royalty gas, or its only because you made these noises about Alcan being an acceptable second choice and that you didn't dump all over the Canadians like we wanted to.

Well, it would seem that it would be an astute political move to go ahead and call everybody's bluff. You will recall that the Legislature almost unanimously, under the leadership of Senator Rader, urged the -- in fact, demanded that the administration go ahead and do this. So, the Governor now can come back to the Legislature with what I think is really a contract that doesn't mean anything for the --

REP. MEEKINS: Is this the hypothetical Governor?

DR. TUSSING: Yes, this is the hypothetical Governor. He now comes back to the Legislature with this can of worms.

SENATOR RADER: A realistic can of worms, huh?

REP. MEEKINS: And a real Legislature.

DR. TUSSING: And you look at it and you decide there is some problems with it, that the State may give up too much in it and I think that Mr. Moody and Dr. Swanson have some valid criticisms -- technical criticisms of the contract or that maybe you shouldn't have sold all the gas, or a

whole series of reasons. Or, you may not be convinced that you are buying any political influence. But, what happens if you vote it down? And say -- where is the finger going to point when Arctic Gas gets approved? El Paso can say -- pick up its marbles and go home or something like that. It becomes a real psychological blow, at least within Alaska, to the El Paso effort. And, you guys, by voting this thing down bear the onus. You're the ones who defeated the Trans-Alaska Gas Pipeline.

If you pass it, this hypothetical Governor has exercised his leadership over this hypothetical fractious and undisciplined Democratic Legislature and carried the ball for Alaska. And, when and if Arctic gets the approval, he can show that he has done everything he could, and, in fact more than anybody reasonably expected him to do. He has done just what the enthusiasts for El Paso -- what OMAR has been saying he should do all along. They can't fault him on that. He has managed to carry along these legislators who were riding off in every direction. So, that -- that is what I think the fundamental significance of these contracts are and that is why I say I am not sitting in your seat, so I won't -- and I'm probably not the kind of person who could ever get into one of your seats. And so I won't advise you -- I won't advise you of what you are doing.

SENATOR RADER: Representative Meekins still has the floor.

REP. MEEKINS: Mr. Chairman, I just want to thank you for pointing that out. I never would have thought of it. I would also like you to direct him to be more forthright.

SENATOR RADER: Quit beating around the bush, now. Senator Colletta?

SENATOR COLLETTA: Yes. Dr. Tussing, you know that opened an area that, since you are venturing opinions, it seems to me out of the presentation on the political activities rather than the economic ones that affect the line. You missed the first day but the entire congressional delegation, without regard to party, also say that on the national level they want unanimity of support for this line. Now, am I, you know -- should I believe from a conclusion of your answer to the last question, that all of us are playing a game and isn't the parallel to this line identical to the oil line that came to Alaska on a one vote measure?

You know, I can't help but infer, at least in my own mind, from what you are saying is that regardless of what we do or the congressional delegation does, not only Alaskans, that this decision will be made by two beings and they don't need us, we're playing the game and I would suggest that is wrong. I take offense to it, because in the oil line there were those people who felt

very strongly that possibly a route other than through Alaska was beneficial and stood up and took the flak. And I would suggest that in this body right here there are those who still have not concluded that maybe the all Alaskan route is the way to go.

I really take great offense that you are lumping us into playing a show, and that isn't true.

DR. TUSSING: Well, let me deal with the first question -- or the second question, and that is the parallel with the Alaska oil pipeline. I don't see a significant parallel. In that case there was only one proposition before the Congress. There were no responsible corporate sponsors for a Trans-Canada pipeline. There was the unanimous support, the State of Alaska, the oil companies and the administration behind that proposal. Yet the opposition to it managed to mobilize something like forty-two votes for a Canadian alternative which didn't exist.

Now, we have an entirely different situation. The momentum and the weight of the responsible corporate sponsorship, the weight of the agency endorsements within the federal government are all with the Trans-Canada system. The momentum is there. When the Trans-Alaska Pipeline bill was before the Congress in 1973 it was right at the height of the Arab embargo and it was the

only thing there that Congress could possibly ratify. And, it -- there is some question of whether it would have gone through without all that -- without all those preconditions. Now the momentum, the establishment, the route to be azoic -- and it's got a far higher -- it starts with a far higher proportion of support, despite the fact that it has got responsible corporate opposition and it has got the State of Alaska and a number of other entities opposed to it. It starts -- Arctic starts stronger in Congress than the Trans-Alaska Pipeline -- oil pipeline ever got in Congress. So, that I don't think it is parallel.

Now, going to the question of the delegation. I hate to -- I'm a little diffident about beating my own drum, but on major national, political questions concerning Alaska, the biggest ones, our delegation, whoever they have been, with perhaps one exception, and our administrations, whoever they have been, have been one hundred percent wrong on these issues and I think that I have got a little better record on that.

Going back, for example, to the question of whether the Secretary of the Interior could or would lift the land freeze and be able to authorize the pipeline without the settlement of Alaska native claims, or to a more fundamental issue, whether there was any legal

merit or political horsepower nationally behind the native claims. That were -- with the exception of the second in which Senator Gravel, when he did come in in 1970, was an advocate of the native claims, our delegation and our State administration dismissed the possibility that this could hold up the pipeline and I was practically stoned out of Anchorage in 1969 when I told the Chamber of Commerce that there couldn't be an oil pipeline for maybe seven years and going through the things that had to be done. Well, this was against the unanimous consensus of our administration and our delegation.

Come again to about 1972, when the question of the destination of the oil and the West Coast supply/demand balance, you had unanimous profession by the industry, by the federal administration, by the State administration and by our delegation that demand on the West Coast would exceed production, combined California and Alaska production, and that the question of exports to Japan was not a real question because there would never be a surplus of oil on the West Coast. And, again, I think that I was probably alone in the State in maintaining that this would be a problem.

Our delegation and most Alaska public officials suffer a disease which is endemic to isolated colonial areas and that is, that it is very easy to believe ones

own propaganda, to have wishful thinking. Now, I can't believe that our delegation really believes that there is a substantial chance that they could get a majority political vote for the Trans-Alaska pipeline.

I do know that it would hurt them very badly politically in Alaska to come in and do the same kind of thing I do, that is, deliver the bad news. Again, I have very little chance of replacing Senator Stevens or Senator Gravel because I do tell the voters and the politicians the bad news rather than the good news. And so, I can't go into their heads and say why is it that they give unanimous support. I just ask you, what would be the political -- what are the political risks to them of saying there is nothing you can do to advance the Trans-Alaska pipeline, better forget it, buddy. You know what would happen to them, regardless of whether that is their best judgment. There is no political to them at all in saying, "Go, man, go. Let's do everything we can for El Paso." So, I don't know what -- you know, I don't know what is in their heads but I don't think that you can really weigh their statements as an accurate objective judgment of what is going to happen in the United States Congress.

SENATOR RADER: Any further questions?

REP. CHATTERTON: Yes.

SENATOR RADER: Mr. Chatterton?

REP. CHATTERTON: Thank you, Mr. Chairman. Dr. Tussing, I am told that there was a recent poll conducted by the Rowan group of public opinion and the findings of that indicated in the order of eighty to eighty five percent of the citizens of Alaska favored an all-Alaska gas line. Are you suggesting in the comments you just made that we who represent those people should subvert their opinions?

DR. TUSSING: Not at all. I'm saying that you -- you as members of the Legislature have to make this judgment for yourself on the basis of the way you judge public opinion and the way you judge whats right and wrong. That is not for me to say. I said I will not recommend the vote one way or another on this.

SENATOR RADER: Representative Gruening?

REP. GRUENING: Well, this may be a clarification of Representative Chatterton's question, but, is public opinion subverted whether we reject or approve these contracts? As I understand it, the question before us is approving these contracts and not necessarily the support or non-support of the El Paso line. In your testimony the two are not necessarily, in terms of actual effect, are not synonymous.

DR. TUSSING: Is that a question?

REP. GRUENING: Yes.

DR. TUSSING: I don't -- I agree with you that the -- that it is possible to be in favor of the Trans-Alaska pipeline and to be against this contract, or say to conclude that this contract doesn't affect the outcome.

SENATOR RADER: Representative Miles was seeking the floor.

REP. MILES: Dr. Tussing, you indicated that there was no support for the El Paso project in its market area, I believe. Am I correct there?

DR. TUSSING: No. I said there is no substantial support in California. I was talking of California's principal market area.

REP. MILES: Just California only?

DR. TUSSING: Yes.

REP. MILES: I see. Well, this is a major market area, I understand.

DR. TUSSING: Yes, California is El Paso's biggest market area.

REP. MILES: Why -- getting off of politics and onto economics for awhile, why would El Paso spend so much money in developing a project if there is no support there? Am I missing something? I obviously am.

DR. TUSSING: Well, again you are asking me to speculate about peoples motives and I can just try to put myself in their place. El Paso, in the first place, wants to

assure its customers that it is doing everything it can to obtain gas and a major campaign to build a pipeline system -- a transportation system from Alaska into their market area is such a gesture and it may earn them some Brownie points even if they -- you know, even if they aren't successful. That is one consideration. Now, El Paso is also getting very heavily involved in LNG technology all over the world and wants opportunities to develop and expand this technology.

Now, whether or not how great a probability of success they have, or they believe they have, I don't know. I think it's probably a good gamble for El Paso to stay in the race in the expect -- on the possibility that Canadians might not come through. That then El Paso is posed with an alternative system.

I would not say surely that the El Paso system will be approved even if the Canadians can't get their act together or if they turn down Arctic and Alcan, but at least El Paso is certainly number one -- number one in the line with this and they would -- if they successfully complete it -- financed it and completed it and operated it, they would add more cash flow to the corporate treasury.

Now, why do they want the gas? Why do they want the royalty gas, because they are in the gas business.

They want gas to flow through their system. They would want the gas to flow through their system regardless of what system were chosen. I'm sure that once -- that if a system other than El Paso was approved, El Paso will be back here at the state trying to buy the royalty gas and will be back trying to buy gas from the producers.

I don't think there is any mystery of what their general motivation to the enterprise is and for risking money for the enterprise. It is a perfectly legitimate kind of corporate venture.

SENATOR RADER: Representative Swanson and then Senator Huber.

REP. SWANSON: Yes, I just -- I'll turn the clock back just a couple of minutes and something has disturbed me through all of these hearings, that we are here talking about a gas contract and using data that is two years old. Now I'm one of the people who endorsed a all-Alaska route two -- going on three years ago and we are still using that support in the propaganda used today. We have not passed a resolution since we came to this Legislature endorsing --

SENATOR RADER: Representative, do you have a question of the witness?

REP. SWANSON: Yes. Well, I kind of resented what was said here awhile ago and I feel a little bit like that I have the right at this table or any other table to state .

that I don't think that the --

SENATOR RADER: If you feel you have been attacked, you have a right of personal privilege but the purpose of this hearing is to make answer -- ask questions of these witnesses now.

REP. SWANSON: All right.

SENATOR RADER: If you wish to why proceed.

REP. SWANSON: I feel like you do, John. I would like to ask you, in your remarks concerning the support of the El Paso route, do you take of what has happened today or two years ago?

DR. TUSSING: I'm not sure what you are referring to.

REP. SWANSON: Well, in your -- in your statements of the Legislature totally supporting the El Paso route.

DR. TUSSING: Oh, the last session of the Legislature adopted a resolution urging the administration to make a gas sale to El Paso and to other supporters in the Trans-Alaska route.

As far as I know, you are perfectly correct, this Legislature has not adopted any resolution to that effect.

REP. SWANSON: Thank you. Thank you, Mr. Chairman.

SENATOR RADER: Senator Huber?

SENATOR HUBER: Thank you, Mr. Chairman. Mr. Tussing, the Four Dollar price that you mentioned on gas, is it correct

to assume that was an mcf and that it would compare to Twenty Four Dollar a barrel oil price or Sixty-five to Seventy-five Dollar a ton coal price with eight or nine thousand BTU's assumed?

DR. TUSSING: Well, those -- those are the equivalent prices I don't want to be pressed to give a specific price because one of my points is that nobody knows what the price is going to be. It is very likely to be much higher than the sponsors of any of these projects are telling us, but whether the overruns are going to be five percent or five hundred percent, we can only speculate and so --

SENATOR HUBER: Would you care to expound on the saleability of Four Dollar gas compared to Twenty-four Dollar oil, at this time?

DR. TUSSING: Thats -- it's a complicated question. The value -- as I said before, the value of gas to the average homeowner or commercial user is roughly the value of fuel oil plus the -- say, some amortization of his cost of conversion if he has to convert from oil to gas, and so, so at the burner tip, gas is on the average worth maybe Two Dollars and Twenty-five, Two Dollars and Fifty Cents a million BTU today.

Now, if we expect the OPEC oil price to go up roughly with inflation, maybe six percent a year.

and so on. We can expect that average value of gas to go up. Now, the gas distributors gather together gas from various sources at various prices and they sell it at an average price. The gas distributors and the pipelines are also required by their franchises or by their licenses to provide this service -- to provide gas to all comers at a cost of service price. And so, if they have a shortage, if their demand is greater than their supply, they're often -- they will be willing to pay more than the gas is actually worth at the burner tip to acquire it and put it in their system.

Otherwise, they have consumers in which they have legal -- to whom they have a legal obligation to serve, who go short. So that for small amounts of gas, at the seasonal peak, or when there is some sort of emergency, the gas distributors may be willing to pay Ten Dollars, may be willing to pay the equivalent of One Hundred Dollar a barrel oil to avoid turning off the valve to their consumers. So -- but you can't take Ten Dollars a thousand cubic feet as the value because you have got to look at the whole cycle. Now, if the gas coming out of the pipeline costs the distributors Six Dollars a million cubic feet and he has got to -- or a thousand cubic feet and he has got to sell it at an average price of say Two Fifty, that means he has got to get a hell of

a lot for it in the peak season. He may have to get Ten Dollars for it at the peak season and then he has got surplus gas, he's paying for the gas that comes through that pipeline in midsummer even though his regular residential customers don't need it. And, in that case, he has got to sell it in competition with coal for a dollar or residual fuel oil for Two Dollars.

So, it's not -- there is no single market value price and to know how much, say six hundred fifty bcf of gas or say one hundred million cubic feet of gas per day is worth to a gas distributor in Chicago or Los Angeles depends upon how short they are, how much they have already cut off their low priority customers, what their other alternative gas supplies are. Do they have a lot of flowing -- of gas flowing under old regulated contracts where they are paying Thirty Cents or Fifty Cents and to be used to subsidize the purchase of expensive gas. You have to look at all of these things and then each distributor figures out what the gas is worth to it and what the cheapest alternative is. If it goes to -- say it goes to Four or Five Dollars, they will look at making synthetic methane from oil which is very expensive for base load supply. It is more than the average consumer will pay but if they are trying to -- if they are just trying to fill a gap, it is a lot less risky to build a

propane air plant or a plant to make methane out of naphtha for Four Dollars an mcf than it is to commit yourself to twenty years of take or pay year in and year out Four Dollar gas from Alaska. So, Four Dollars is cheaper from an SNG -- from an oil SNG plant than it is from a gas pipeline and I just can't give you the answer and say at what point, at what price Alaska gas prices itself out of the market.

The Interior Department's -- the FEA study that says Two Forty -- Two Forty, that's too low in view of their opportunity to roll it in. The El Paso's assertion that the distributors will accept the price no matter how much it costs is pure crazy. There is just no substance for that, there is a limit and I can't tell you -- probably Dr. Swanson's firm has done work in this as to what the long term limit to the city gate price is, but I can't tell you. It is somewhere between Two Forty and infinity. And I don't think its -- I really don't think it's much more than Four or Five Dollars.

DR. SCOTT: Somewhat short. This way from infinity.

SENATOR RADER: Senator Huber?

SENATOR HUBER: Mr. Chairman, the other question I have, I have trouble in phrasing it and I have noticed that you have returned to being a bit on the tough side and I don't think you will give me the latitude that you gave Senator

Colletta, so I'll let it go.

SENATOR RADER: Well, now that we have established that I'm an unfair chairman, are there anymore questions? Mr. Carpenter.

REP. CARPENTER: I'm going to make an extension of Senator Colletta's question. Dr. Tussing, you said that you angered the Chambers of Commerce by saying there was going to be a hiatus in construction of a Trans-Alaska oil pipeline due to land claims and so forth?

DR. TUSSING: Yes.

REP. CARPENTER: Well, refreshing your memory a little bit, you actually angered them because you said there was no political chance of a Trans-Alaska oil pipeline, there was going to be a Trans-Canadian oil pipeline and that is what got everybody on you.

DR. TUSSING: I never said that. Never, never, ever.

REP. CARPENTER: Our memories differ.

SENATOR RADER: Are there any other -- I'd like to ask everybody to keep themselves on the subject of inquiry here. There is opportunity -- there will be opportunity for each of us to express ourselves at a later time as to whether Dr. Tussing's remark characterized a hypothetical or a real governor or legislature or a congressman. We needn't confront him with that today. Our purpose here today is to take his testimony on the subject before us and I

would like to limit the questions to that if we might. Senator Croft?

SENATOR CROFT: Could I interrupt your remarks and ask a question? I am curious what you think the prospects are that any pipeline, Arctic, El Paso, Alcan, or another one if it is proposed, will actually begin construction sometime in 1978. Judge Litt talks about a dollar well-head value being about the upper limit and all of the projections are that these -- each of these projects will have a higher amount than that. You have talked about all events tariffs and types of public financing that haven't even been considered yet. What do you think the prospects are? You have indicated Arctic is likely to be approved, do you think that means that they can actually begin the construction on the time schedule they are talking about?

DR. TUSSING: I don't -- I'm very skeptical as to whether Arctic can be built. I think it can be approved, that's the -- I think it can be approved in the United States and all other things being equal, it will be approved in the United States. It will get the endorsement of the FPC. But, shortly after the FPC decision we'll get the Berger decision, the National Energy Board in Canada will be second phase hearings next month. The NEB -- I don't know what the NEB will do, it will probably hand the hot

potato to the cabinet -- to the Canadian cabinet. But, once the FPC makes its decision and once Berger in effect makes a contradictory decision, what is on the agenda is for negotiations between the United States and Canada as to what can be worked out. And the final decision depends first on those negotiations and second on resolving a lot of questions that involve both government and industry that really haven't been confronted yet. One is the financing question and in what manner shall the respective governments provide the guarantees against the risks in this system and practically any proposal is going to be extremely controversial. Loan guarantees come -- again, raise the question that your socializing the private risk and letting the private owners have the profit, and there is going to be a lot of antagonism in both countries.

You may recall that the Diefenbaker government fell as a result of things resulting from the loan guarantees to the Trans-Canada pipeline. The -- so that -- it's a sensitive issue in Canada.

Another issue that hasn't yet become -- begun to be confronted which is relevant to this royalty gas sale, is how the gas is going to be allocated. If the -- if there is still wellhead price control by the FPC, every gas company in the United States is going to want some of that gas and no company can offer the producers or

the State of Alaska more favorable economic terms than any other company. So, there is going to be a lot more -- there is going to be a lot more demand for that gas than there is supply, assuming that some sort of viable pipeline system is hooked up.

The FPC is going to have to decide whose contracts are going to be approved. And even though there is no -- there is no current legal authority for the FPC to allocate gas and -- at least in non-emergency times among pipelines the way it can allocate today and say -- say to Columbia, "you know, Tenneco needs the gas more than you do, so we will turn down the Columbia contract in the -- the proposed contract with Columbia in the public interest because this other system is cut -- it's jeopardizing its number one and number two priority customers while you're still serving threes and fours." So, the FPC is going to decide who gets the gas. That is one of the reasons the producers aren't going out of their way to sign contracts, because -- you know, why should they choose one over another? They are not going to get any price advantage and the contracts -- a lot of them will probably be turned down anyway because the FPC wants somebody else to have the gas. Well, that hasn't yet been dealt with and if gas contracts are going to be used to finance the pipeline, then these have to be executed

before a final financial plan goes together. So, in summary, I don't see much chance for construction in -- beginning in '78 unless the U.S. and Canadian governments bite the bullet and say, "we will provide the interim financing and we'll guarantee the thing until you put the final -- until all the final arrangments are made." And I really don't see -- I don't see that. Maybe next winter, if the questions before Congress and the Parliament, and we have got another cold spell like this years, they'll be willing to do it. They may send the Corps of Engineers out to build the thing for all I know but -- but, I don't see it starting in '78.

SENATOR RADER: Senator Croft, were you through?

SENATOR CROFT: No, I have another question. To what extent do you feel that the assumption of the amount of gas that is available on the reserves in the Arctic, Prudhoe Bay, as well as the Mackenzie is an unrealistically high assumption? Both El Paso and Arctic are big volume lines. To what extent do you think their estimates of their potential build up of throughput are realistic or unrealistic?

DR. TUSSING: Well, if by the time -- by the time the system is completed, I think there is a good chance that there will be a lot more gas than we know about now. That isn't enough to get -- to get the kind of debt financing I'm

talking to. A good chance isn't enough. A good chance is enough to make a risk venture, but if you are risking your own money and you say "I think there is going to be plenty of gas there that we'll be -- that by the time the thing goes on stream we would be able to produce four and one-half bcf from those two areas and that's -- that's the way to average expectation and I'm willing to gamble my money on that." That's fine, but the bond -- the bond-holders want a ninety-nine percent assurance.

I think that there is merit to the notion that society, that is, that the U.S. and Canadian governments should take the risk and build a pipeline that is cheap to expand. Now, if the governments are not going to do it then the -- then the rationale -- the strategy of Alcan is the only one that makes sense. You put in absolutely minimum capital investment necessary to start that gas and that cash flowing. I think that they have -- that the Alcan people haven't scaled down their system as far as they could. That, for example, they could drop Northern Border out of the system and say, "we're going to -- we expect the NEB to authorize or compel Trans-Canada to move this east and then we'll take it through a Great Lakes pipeline and we'll increase the power or whatever is necessary there."

I think -- now, Judge Litt wants a western leg on

the Arctic pipeline and all the Western States want it because they don't believe that they will get the gas under reasonable prices by displacement. Well, the western leg is physically superfluous, at least up to, say one and one-half bcf going to -- going to western systems. Well, so -- so, as part of the political compromise you put the western leg into the system but you don't build it until after the gas starts flowing and the production builds up.

So, but if -- but if Canada and the United States are willing to bite the bullet and say, "our best geological assessment is that there is sixty or one hundred tcf up there which can be discovered within the next ten years, then let's go haul the hog, let's put in a high capacity pipeline. Let's put a MacKenzie link, whether it is on the Dempster Highway or the foothills or whatever, as part of the phase two and build the thing so it is compatible with the Mackenzie link and so on."

SENATOR CROFT: What you are saying is that a sale of the gas will not have any effect on the route decision. What I was really getting at to get you to comment on, do you feel a -- (a) a refusal to sell any gas or (b) a refusal to allow production of gas might influence a route decision?

DR. TUSSING: No. There is no credibility to such a threat by Alaska because once the decision is made, the State's

got no -- the State's got no alternatives and all you do by not allowing the gas to be produced -- you may cause problems for oil production which causes the State a lot of problems and you forego the revenue. And, I just can't believe the State is stupid and spiteful enough to refuse to produce the gas just because the rest of the country didn't do -- didn't build the route the State wanted. It just doesn't make sense. And so that threat has absolutely no credibility. In the calculation of rates of return or costs assuming only seven-eighths of the production are just meaningless, you are just not going to do that and nobody will believe that you'll do that.

SENATOR CROFT: What about the holding down the rate of production?

DR. TUSSING: Well, there are some difficult -- there are some difficult problems. Suppose your reservior engineering studies show that the optimum rate of production is 1.6 bcf below -- is below the economic threshold of any pipeline system but that you -- but you do run into trouble by keeping injecting that gas and you're not going to flare it. You have some tough -- you have got some tough problems and I don't have an answer to that and let's hope we don't have to face that one. But, it is entirely plausible that you may have the level of production large enough to give you problems as to what to do with the gas,

but not large enough to make any transportation system viable. And, of course in the past what was done in that sort of situation is what is being done is Saudi Arabia and Venezuela and the other big isolated fields in the world, they just burn the stuff.

SENATOR CROFT: Mr. Chairman. If a one in ten chance which you referred to earlier is sufficient to keep investors from backing any gas line, isn't the uncertainty about levels of production such that it might -- that itself might cause a delay in the pipeline?

DR. TUSSING: Yes, I think so. The --

SENATOR CROFT: Particularly when it is coupled with the possible decision by the U.S. Government on deregulation which may make Alaska gas -- not only might they face a lower volume of Alaska gas but a less valuable Alaska gas, if you couple the two together.

DR. TUSSING: Yes, all of these are just parts of a big package of uncertainties that are going to cause difficulties for any of these proposals.

SENATOR CROFT: Thank you.

SENATOR RADER: Representative Gruening?

REP. GRUENING: Dr. Tussing, as I understand what you said earlier was that the Canadian government was going to make the choice as to whether it was for either Alcan or Arctic. How is the President going to feel comfortable

with making a decision, certifying a route without that stage in the negotiations being very certain? Are they going to amend the Alaska Natural Gas Transportation Act so he has more time? In other.words, he has until July -- or September first and then ninety days if he wants to extend it. Is he going to feel comfortable with making that kind of decision without those things resolved?

DR. TUSSING: I think what he is going to do is as soon as the FPC decision comes down, and it may be happening right now, he is going to start talking with responsible Canadian authorities about -- oh, to what -- what kind of compatible decision we can come out with. And, I don't think that the Canadian authorities know what their political constraints are yet, until Berger has actually published his findings and there has been the -- a chance for a discussion of it and for the bureaucracy -- for them to read the FPC decision in the United States.

But, if the President makes the decision, say at the end of '77, you can count on its reflecting his discussions with the Canadians and he is not going to make a decision which is totally incompatible with what he thinks the Canadians are going to do. And both countries are going to bend over backwards not to appear to be forcing the hand of the other and to be blackmailing the other that there -- or leapfrogging or something like

that. They're going to try to make it -- they're going to try to come out with compatible decisions, whatever the --

REP. GRUENING: You seem to raise the same arguments that the El Paso people raise in terms of the unsolvable Canadian questions and I think, you know, the same statements seem to be made in terms of the problems. Now, are those problems going to be resolved to the extent that the President can make a decision certifying say a Canadian route and not -- coming back at a later time and say, "I'm sorry, we can't -- the Canadians just decided that they can't go either route, we're going to have to go to an El Paso --"

DR. TUSSING: Well, the law says that he has to make the decision whether or not Canada has -- he has to make a decision on its merits whether or not Canada has made a decision. And, irrespective of what the process in Canada is, in reality it's going to be a joint decision once the -- once the thing has gone through the regulatory and hearing phases of it and I don't know the exact mechanism by which the United States and Canada will consult on this. I'm sure no mechanism has been set up. But, it's not an insoluble problem, it's a problem whose answer -- whose outcome is impossible to predict with competence now. I don't think anybody can come out with

a solid prediction of what will happen in Canada, much less -- I'm as willing to do it as any Canadian. There is no authoritative -- there is nobody who has the authoritative position in Canada to say what Canada's position is on this. But, Canada will have a position of some sort and it will influence the President's decision.

I think that the -- that there is a good chance that the compromise between the FPC's decision in favor of Arctic and Justice Berger's decision against Arctic will be some kind of expanded Alcan system. That is my guess, but I wouldn't give it more than a fifty percent probability. One substantial possibility is that Canada will not authorize any pipeline or will postpone it till after the elections and the President may decide that we have to go ahead with our own system because of our internal needs, even though it's not -- even though it is the second best. So, my ability to forecast or prophecise is strictly limited on that.

SENATOR RADER: Representative Meekins?

REP. MEEKINS: Thank you, Mr. Chairman. Dr. Tussing, you stated in your comments that this contract, in your view, was not essential, that we weren't -- essentially that you weren't getting very much in the contract but looking at it from the other perspective, what are we losing, if anything? Are we losing anything by approving it?

DR. TUSSING: Well, it is -- it is conceivable that the Trans-Alaska route, or for that matter an Alcan route, after the State shifts to it, if it does, will be approved and that these contracts will be the basis of contracts under which gas actually flows.

I'm rather doubtful, even in this situation, whether the FPC will approve just these contracts for a number of reasons. But -- but it's possible you may be stuck with these terms and they are probably not -- not the best terms you could get in a bidding situation after the -- after the pipeline is -- route is clear. Certainly there may be opportunities in a deregulated situation to get a more favorable situation. I don't want -- I don't want to speculate too far on that, but your other consultants who have examined the contracts in detail point out ways in which the State has given up options. So -- So, in case they go into effect you have given it up. I do have one specific criticism of the contracts even starting -- even from the presumption -- the premises from which the administration is starting, that is, that you are going to buy some political support.

And, I don't know why you had to commit one hundred percent of the gas and I think there is some -- there are a couple reasons why you probably shouldn't commit one hundred percent of the gas. Firstly, you have this most

favored nation clause, that is, that the price is the highest price paid by any interstate purchaser. Now, it may well be possible for the State, if it kept some -- held some gas back to find a purchaser who would pay a higher price than any of the others and jack up the fate. If it kept some -- twenty-five percent out and waited until -- waited until the bidding process at the time of the completion of the pipeline, you might be able to get a higher price than any of the sales from the -- by the operators because the State might be in a position to sell to a nonjurisdictional purchaser, or to one that has a special tax advantage, like a state entity.

And, I would like to see you have the opportunity to use that twenty-five percent to jack up the price on the remaining seventy-five. Then the other is -- in the administration's presentation and within the whole rationale for the thing, there seems to be a high probability of a shift in route -- of a shift to Alcan, for example. And, if that is serious, if that is not just window dressing, then it would seem to me you would want to keep twenty-five percent out to -- and to offer it to Northwest at that time that the State moves to the Northwest position. Otherwise, the option of shifting doesn't seem terribly great. So, even if I were -- even if I accepted all the other premises, I don't see the reason for selling more

than three-quarters of the gas at this time.

SENATOR RADER: Representative Meekins?

REP. MEEKINS: Do you happen to know if that -- if the most favored nation provision, as you call it, in there would apply to sales to users? I'm not sure it would.

DR. TUSSING: I don't have it in front of me but if I recall the language, it's in any interstate sale. It doesn't -- or any interstate purchase and so it doesn't characterize the purchaser. It would seem to me it would -- frankly, I don't see why in a deregulated situation it should be limited to interstate sales since -- since, if the gas is worth Two Dollars in-state, to an in-state purchaser, you shouldn't sell it for One Dollar to an out-of-state purchaser.

But, as Mr. Moody says in his prepared statement, it may not be that you can get any contract which includes a -- you know, includes that -- all these provisions. That's a matter of judgment that is up to the negotiator, he really has --

REP. MEEKINS: Well, I'm trying to find out if there is anything we are really losing, in your view, in approving this contract. You know, we've heard that that -- that problem that you point out that we may be losing a higher price by not having reserved the twenty-five percent so we can jack up the most favored nation provision in there.

That might not be a realistic concern because the FPC wouldn't approve of such a contract anyway in their regulation of the transportation of such gas.

DR. TUSSING: Well, no. That's a -- that's one that depends on the -- it's conditional on deregulation. So, it wouldn't require an FPC approval. The FPC will continue to regulate the transportation and the transportation costs but if that's a feature of the wellhead price, conceivably the FPC could reject the whole contract on the grounds the pricing provisions are not in the public interest but I don't see that as a problem. I just -- let's say what you are giving up are the shortcomings identified by Mr. Swanson and Mr. Moody, as far as I can tell. That is, that there -- that you are giving up options or some possible options for getting a higher price by leaving the gas off the market until you see -- until all the circumstances are sorted out. You know -- for example, the amount the gas is worth to a particular gas distributor does depend on the transportation system. Now, the hierarchy -- the ranking and the order of preference of the different potential customers would change. For an Alcan system probably -- probably Northwest would be your preferred customer in a deregulated situation because the value of gas in its market is essentially the same as it is anywhere else in the country but it is

closer, so you have the lowest transportation costs. And, under the LNG system you would probably -- conceivably El Paso would be willing to bid the highest for two reasons. First, because it would be the point of off loading and be closest, and second, because they are quality problems. California probably has the highest premium but as you know, of course PG & E, which is one of El Paso's customers, is part of the Arctic group and would like to bring the stuff overland to California. Now I don't know how much PG & E would give.

REP. MEEKINS: Thank you.

SENATOR RADER: Mr. Chatterton?

REP. CHATTERTON: Mr. Chairman, Dr. Tussing, this is in effect the same question as Mr. Meekins -- Representative Meekins asked and I am going to ask it so I think that we can not be confused by rhetoric about pipeline routes and stay with just one subject, the contract, and I think you can answer it with a "yes" or "no". My question, do you believe that this legislature in approving these three gas sales contracts would be doing the people of Alaska a disservice?

DR. TUSSING: I can't answer that. That's a political question that really goes beyond my competence.

SENATOR RADER: Any further questions? We'll adjourn and subject to an adjournment by the House and Senate

tomorrow morning we will reconvene at 11:00 a.m.

We'll start with the Alcan people and go from Alcan to Arctic Gas and then probably through our consultants and then into the general public testimony.

We stand adjourned.

(Whereupon the hearing was adjourned at 5:15 p.m.)

STATEMENT OF JACOB ADAMS, VICE-PRESIDENT-
LANDS, ARCTIC SLOPE REGIONAL CORPORATION
ON H.B. 102

My name is Jacob Adams. I am appearing before the Committee on behalf of the Arctic Slope Regional Corporation in my capacity as Vice-President in charge of Land Selection and Conveyance.

ASRC is strongly opposed to legislation which would impose a tax on proven oil and gas reserves. The proposed legislation would constitute an extremely damaging burden to ASRC and could very well bankrupt the corporation.

ASRC recognizes and appreciates the Legislature's concern over imminent near-term deficits in the State Treasury arising out of predictable imbalance between revenues and expenditures. Expenditures in recent years including revenue sharing with local governments has been a mainstay of supporting their local budget requirements especially in education.

While the Inupiat people of the Arctic Slope have benefited to some degree by State financial support, it has not been to the same extent that more urban areas have benefited.

At the present time, the present cash reserves and future anticipated revenues arising from the Alaska Native Claim Settlement Act, as well as programmed receipts

under various exploration and development agreements with major oil companies, have been heavily committed to produce a viable economy in the Arctic based on a profit motivated, free enterprise system. ASRC, without special assistance or subsidy from the State, is underwriting many commercial business ventures, which will ultimately provide revenues to the State in the form of income and business taxes. If prevented from developing on its own initiative because of a new tax burden on proven reserves, which ASRC shall shortly inherit under its mineral in-lieu selection entitlement, the economic future of the Arctic will be seriously impaired.

A tax on reserves is a regressive tax in that it is not gauged on the ability to pay. True, large oil companies can accommodate such taxes by passing on to consumers those costs, but not every corporation, organization or individual can pay. Contrary to the bulk of public opinion there are others in the State of Alaska, in addition to large oil companies, that have a stake in ownership of oil and gas reserves. This other category includes individual lessees, royalty owners, and independent companies.

As you are also aware, at least six native regional corporations have entered into oil and gas exploration agreements which, in addition to base royalties as a land owner, provide for other benefits including net profits provisions,

joint ventures or participations, carried working interests, or a combination of all three.

Although we are not here to argue the legal interpretation of Section 21(d) of the Alaskan Native Claim Settlement Act whereby a twenty year tax exemption applies to certain property interests of native corporations and individuals, there are those who believe that native interests in leases in the form of participations as well as royalty interests would be subject to a property tax in the same manner and to the same degree as oil company lessees.

We submit that the property tax being considered would depress the value of unleased native corporation lands as well as those that are presently leased or that shall be leased in the near future. The time of payout in order to receive benefits under a net profits interest would be much delayed. From the regional corporations' standpoint, paying taxes today with the uncertainties of developing a market and unknown future wellhead value of crude oil and natural gas, could create financial havoc if not bring upon the economic demise of the corporations.

A specific example will serve to illustrate our concern. ASRC previously filed in-lieu selections on approximately 18,009 acres within the boundary of the known geologic structure of the Kemik Unit. The Kemik Unit has one completed and shut-in gas well. A second exploratory well is currently drilling and a permit for a third exploratory well is pending. No development wells have been drilled;

however, the U.S. Geological Survey has indicated that the discovery probably is commercial based on the KGS classification. The Survey and the original operator, Forest Oil Company, indicates a probable produceable volume of 475 bcf of gas. This is certainly no "barn burner" or as we call it "igloo melter" in terms of North Slope operations.

ASRC filed selections within the Kemik Unit because it has over 1.2 million acres of in-lieu subsurface entitlement and the Board of Directors believes such selections should be made first in proven areas of production where fee ownership is not important in order to maximize the spread of its overall land ownership throughout the Arctic Slope.

ASRC's interest in the Kemik Unit upon transfer of the subsurface estate from the Department of the Interior ranges from 12-1/2% royalty under existing Federal leases to 100% mineral interest under unleased lands within the unit boundary.

Based on the reserves attributable to ASRC's interests derived from the operators volumetric calculations, the volume of produceable gas is 213 bcf. Assuming an arbitrary value at the time production commences of $.50/MCF, the value of so-called proven reserves owned by ASRC is $106MM. A 20 mil property tax levy would amount to $2.1MM annually until production commenced.

Since ASRC will probably lease its 100% mineral interest lands reserving a 16-2/3% royalty thereby decreasing its royalty reserves to 64 bcf, the amount of ad valorem taxes paid in the first few years after the tax is imposed may never be recouped as a credit against production taxes. This would be true unless ASRC receives title to the subsurface estate and leases its interest prior to the effective date of the tax law. Actions which force ASRC to land management decisions in haste due to factors (the new tax) beyond its control are unreasonable and patently unfair.

Another problem that we consider likely to develop that would be harmful to ASRC relates to the contract provisions of our several oil and gas exploration agreements. The agreements provide for, among other things, a reasonable continuous drilling provision in the event of discovery on a lease. It is almost a certainty that we would have to waive the continuous drilling provision until the law expires (if ever) thereby extending the period of field development for many years which would not only affect our cash flow projections but deprive the State of production taxes from ASRC lands.

Although reserves could be assessed under a single discovery well, you would obviously be inviting litigation.

We believe that the Legislature should carefully explore all alternatives to raising sufficient revenues to offset near-term deficits and compare the impact against the obvious detrimental effects of the tax on reserves.

Several alternatives that have been advanced in recent weeks that should be thoroughly considered include the following:

1. Indirect borrowing against future oil and gas royalties through an "ABC" type transaction. Selling only a specified quantity of royalty reserves commits only that amount necessary to repay the loan. Royalty production thereafter is free from encumbrances. While further investigation of the applicability of "ABC" financing is needed, we believe it would avoid the question of constitutionality raised by opponents to funding through borrowing. Arlon Tussing, noted University of Alaska economist, has compared the cost effect of taxing reserves against borrowing at low interest rates and concluded that if the State wants to maximize the value of its oil revenues it would be far better off to issue revenue bonds rather than tax reserves in the ground.

2. Another alternative that should be considered is advance payment of severance taxes. Since the producers will be paying severance taxes based on gross wellhead price of oil or gas on a predictable declining basis, payment of advance severance taxes on production with a recapture provision after royalty revenues close the gap between receipts and expenditures should encourage

operators to produce a property beyond what would otherwise be its economic limit. The time of abandonment of marginal properties should be extended for a number of years which would benefit the State and promote good conservation practices.

3. A third alternative that should be considered is a purchase option on State royalty gas with the actual value to be determined at the time of transfer. An option of this nature could be made attractive to large gas utility companies who may be able to accommodate the option payment in their rate base. In any event, the State would not be committing its gas reserves at a fixed price in advance of what the actual value may be at the time production commences. It appears to ASRC that this alternative may be superior to all others

4. Additional competitive lease sales should be programmed to coincide with calendar year budgets of major oil companies to maximize revenues. If the majority of the potential participants in a sale adopt a budget as of the first of a calendar year then it is unwise to schedule a sale for the fourth quarter of a year.

5. Another alternative that has been suggested is advance sale of royalty oil. This appears the least advisable at this time since the value would be heavily discounted by prospective purchasers. However, as an alternative it should be considered.

We wish to thank you for the opportunity to present our viewpoint on the proposed property tax on reserves. Although such a tax may be relatively easy to administer, it has gross inequities and applications. Therefore, if there are other means to raise revenues without inequities, they should be thoroughly investigated and only as a last resort should serious consideration of a tax on reserves be implemented.

One factor that begins to worry ASRC is that the anticipated revenues from Prudoe Bay may not cover rapidly escalating costs of State government at the time production begins. If this occurs, we believe that the tax on reserves will not be phased out as provided for in the various bills with the result that exploration and development on native lands will be further impaired.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

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

February 17, 1977

The Honorable Chancy Croft
Chairman, Interim Committee
on Oil and Gas Taxation
Leasing Policy
Alaska State Legislature
Juneau, Alaska 99811

Dear Senator Croft:

Senate Concurrent Resolution 101, passed by the 1976 Legislature, provided that the Administration and the Legislature would undertake a study of long-term oil and gas leasing and taxation policy, and that the study would be presented to the first session of the Tenth Legislature. Subsequent to the passage of SCR 101, the Administration determined that the Department of Natural Resources would have lead responsibility for the leasing phase of the Study, and meetings with legislative leadership and research staff resulted in further agreements that the Commissioner of Natural Resources would serve as the project manager for a joint study of alternative oil and gas leasing methods. For this segment of the Study, the Legislature appropriated $50,000 to the office of the Commissioner of Natural Resources, and an additional amount of $35,000 has been made available by the Legislative Affairs Agency for additional contractual assistance in conducting the study.

From the beginning, this joint study has been undertaken in an atmosphere of constructive cooperation, most likely in recognition of the complexity and importance of the issues involved. Shortly after the conclusion of the last Legislative Session, I participated in meetings with the Interim Committee in an effort to design the components of an effective study of alternative oil and gas leasing methods. Those meetings resulted in agreement on a plan of study which was initiated some time ago and which has been the subject of ongoing briefings and discussions between the Department of Natural Resources and the Interim Committee.

Generally speaking, that study is completed at this time and will be presented through documents and testimony during the present Legislative Session. The first formal presentation of the results of the Study will be made February 17, 1977.

AGO 935749

Taken as a whole, the Alaska Oil and Gas Leasing Study which is presented to you today is not intended to reach final conclusions with regard to the oil and gas leasing alternatives that are best for the State of Alaska in the future. Rather, it was designed, as a result of the agreement between the Administration and the Interim Legislative Committee, to provide a sound basic portrayal of the alternative objectives the State might pursue in future oil and gas leasing policy and the alternative leasing methods which could be utilized to optimize our chances for obtaining the chosen objectives. In addition, the Study was designed to provide a comprehensive overview of oil and gas leasing in Alaska by portraying its history, the nature of the present State system and information about other factors which must be considered if new leasing systems are to be utilized in the State.

To accomplish these objectives, the following elements of the Study have been largely completed at the present time.

--A statement regarding the history of State oil and gas leasing in Alaska, including Federal history where relevant, and an analysis of this history indicating the rationale for past decisions and the success or failure of leasing decisions.

--A description of the future oil and gas potential on State land sufficient to allow an analysis of the applicability of alternative oil and gas leasing methods in the context of the potential that exists.

--A description and analysis of the present State policy on leasing and the statutes, regulation and structure which support it.

--A description and analysis of major alternative systems which are practicably applicable to State use in Alaska; all stated in terms of alternative objectives the State might wish to pursue.

--A review and analysis of the practical implications of adoption of various leasing alternatives including budget and personnel requirements, information requirements, and the decision-making structure. Subsequently, this might be supplemented by the design of a criteria for administrative decision-makers to utilize in evaluating alternative leasing methods in various situations.

To conduct the Study, substantial work was done both by the staff of the Department of Natural Resources and by professional independent consultants. Although a substantial number of individual conclusions are reached in various components of the

completed study, it should be strongly emphasized that no final comprehensive conclusions on the part of the Administration or members of the Legislature have been reached. Indeed, many elements of the Study present contradictory conclusions, and the overall effect of the study is to present a wide range of alternative objectives and methods to reach them. Speaking for the Administration and as the project manager for the study, it would be my recommendation, following the initial presentation of the study and a briefing on its results, that a period of analysis and public review follow. During this period, comments of others in the public sector should be solicited and further discussions held before final positions are established.

I remain extremely hopeful that the joint cooperative approach to this important and complex issue can be maintained for as long as it remains constructive.

In examining the study as a whole, I have drawn some preliminary conclusions of a general nature which might be of interest as recommendations to the Committee in considering further effort in pursuit of an improved State oil and gas leasing policy.

Overall, the individual studies, regardless of their specific conclusions, tend to indicate that under various circumstances and in pursuit of some objectives, the State could improve its future return from the commitment of oil and gas property by utilizing a broader range of leasing alternatives. As a result, it seems evident that a broadening of the leasing alternatives available to State administrators is in the best interests of the State. What those alternatives should be, and the limitations placed upon them, must be a subject of further deliberations.

Second, as the number of alternatives for future leasing is broadened, it is advisable to broaden the public review process which should be associated with any leasing decision. While final decisions might continue to successfully rest with public administrators, the public process leading to such decisions should be thoroughgoing and in proportion to the importance of the State resource decision. Such process could well include the early publication of comprehensive plans for any lease event under consideration (including the leasing area, the method(s) under consideration, the objectives being pursued, alternatives to be considered, and a review of environmental factors). Second, a component of the public process might well be a published document which relates the proposed lease plan to future State revenue and spending projections and to future State oil and gas leasing plans. In the context of such information, the public process could be most constructive.

Third, it appears that many of the alternatives presented in the leasing study require the possession, by the State, of greater amounts of information regarding potential leasing areas than under the present system. Further study, and perhaps statutory modification, will be necessary to assure the retention of adequate information for certain of the leasing methods proposed.

Fourth, certain of the alternatives undoubtedly require additions and changes in the State administrative structure for oil and gas leasing. Further Administration and Legislative efforts should be devoted to analyzing the practical implications of various leasing alternatives, including budgetary and personnel requirements and the purchase and analysis of necessary subsurface information.

These and other general avenues of inquiry are already being pursued by the Department of Natural Resources and should be the subject of additional joint effort between the Administration and the Legislature. I am extremely hopeful that the lease study presented to you at this time will be helpful in providing a framework for future decision-making. The Administration stands ready to continue in its cooperative efforts with the Legislature to better understand our alternatives and make the best choices for the future.

Very truly yours,

Guy R. Martin

Guy R. Martin
Commissioner

SB 405

SB 406

02-001B (REV. 08-73)

MEMORANDUM

State of Alaska

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

TO: The Files

DATE: January 26, 1976

FILE NO:

TELEPHONE NO:

FROM: Ernst W. Mueller
Commissioner

SUBJECT: Comments on Draft SSSB 406

Mr. Stuart C. Hall, Senior Legislative Counsel for the Legislative Affairs Agency, who has accomplished most of the draft work on SSSB 406, has pointed out several areas which need to be resolved before this bill can be introduced.

Of prime concern to Mr. Hall is the deletion from the bill of additional training and/or experience requirements for pilots of oil tankers, and requirements for State pilots on applicable vessels entering the State's waters. In addition, Mr. Hall feels that the Department of Environmental Conservation does not have the in-house expertise to administer Article 1 of the bill, which would establish regulatory power over traffic movements, requirements of tug escorts, and standard safety features of vessels. Mr. Hall also feels that by placing the authority for Article 1 in this Department, we would encounter serious conflicts with the existing Board of Marine Pilots.

To evaluate these objectives, I have reviewed the functions and operation of the Board of Marine Pilots, and the applicable statutes and regulations under which the Board operates. Presently, the Board sets standards for marine pilots, examines and certifies them, sets pilotage fees and establishes those areas of Alaska's waters upon which pilots are required. The Board has no actual staff, other than clerical assistance provided by the Department of Commerce and Economic Development, and must rely upon the expertise of the Board members themselves in developing regulations.

Further, the State has no additional water-transportation related regulatory authority, other than that residing in the public utility regulation power of the Alaska Transportation Commission or police powers residing in the Department of Public Safety. While it is not the purpose of this proposed legislation to establish a general water transportation regulation and policing authority, the fact that such an authority does not presently exist makes the designation of an implementing agency for Article 1 of the bill difficult. I would, therefore, suggest that the authority for implementing this section reside within the Department of Environmental Conservation, and, in addition, that proposed 30.25.060(7) be removed from Article 2 and added to Section 30.20.050. In this manner, if a comprehensive water traffic regulatory authority is established in, for example,

the proposed Department of Transportation, a simple executive order or revisor of statutes change would transfer this authority to the appropriate agency.

Mr. Hall further requests suggestions on the Enforcement Section; I recommend the following:

> "Sec. 30.20.060. Enforcement, Penalties. a) This chapter and the regulations promulgated under it may be enforced by a peace officer of the State or an employee of the State authorized by the Commissioner of the department.
>
> "b) A master, operator, owner or carrier of a vessel who violates a provision of this chapter, or a regulation promulgated under it is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $1,000 nor more than $25,000, or by imprisonment for not more than one year, or by both such fine and imprisonment. Each day upon which a violation occurs may be considered a separate and additional offense."

Articles 2ff of the bill would establish significant additional oil pollution control authority. As I mentioned in previous correspondence regarding this legislation, that authority currently resides in the Department of Environmental Conservation and should remain there. The only clear line between Article 1 and the other Articles of the bill, other than the obvious one of regulation of a particular industry, is the tanker safety standards requirement. Inasmuch as the standards are specified by law, and the authority to require additional standards by regulation is not empowered to the executive branch, there would be little conflict involved in two agencies administering the bill if it became law.

The tanker standards themselves being mandated by law present several problems. First among these is the removal of flexibility to meet rapidly changing technology and realization of environmental and safety needs. While I recognize the strength of legislating such standards, this may be outweighed through the loss of this flexibility. Further, to my knowledge, no tanker is presently scheduled for the Alaskan trade which has all of these features, although many have one or more. The new Chevron Shipping tankers which may be assigned to the Cook Inlet and coastal product trade will meet most of the standards, but will not have flue gas inerting systems. If the Legislature persists in specifying the features, I suggest several wording changes:

Sec. 30.20.030

(1) Cargo hold [flue gas] atmosphere inerting systems.

(5) Loran-C [LONG-RANGE] navigational system receivers and other [NAVIGATIONAL]position location systems as may be prescribed from time to time by the department by regulation.

(6) Redundant [DOUBLE] boilers on an auxiliary propulsion power source.

(7) Radar controlled collision avoidance working systems.

(8) Two radars in working order and operating, of types specified by regulation issued by the department.

Specific recommendations for Article 2ff.

1. Sec. 30.25.020: Suggest any be replaced by the, and that an additional phrase be added: following the word prohibited.

   "..., except as provided in AS 46.03.740."

2. I agree with Mr. Hall's comment that the requirements for spill prevention, control and countermeasure planning are adequately addressed in the bill, and I stand corrected in my previous comment.

3. Sec. 30.25.040 g should read:

   "...supplied under (e) and (f) of this section...."

4. Sec.30.25.040 g (1) should read:

   "...is sought that is engaged in...."
   and the final sentence should be divided to read:

   "Vessel's seaworthiness. The department may in addition require...."

5. Sec. 30.25.040 g (2). Suggest "this state" be replaced by "the state" in both instances.

6. Sec. 30.25.040 (i). Suggest the phrase "...at least every six months...." be deleted.

7. Sec. 30.25.050. Suggest wording: "... the marine, estuarine and...."
"... at a limited capacity facility,...."
"...less than 500 barrels of oil, petroleum products or by-products...."

8. Sec. 30.25.060 (7). Suggest this section be transferred to 30.20.050.

9. Sec. 30.25.090. "Commission" should be replaced by "department" in three instances. Suggest wording: "...enter into contracts for that purpose not withstanding the provisions of AS 37.05.220-280."

10. Sec. 30.25.100. Suggest wording:
"...this chapter and Ch 46.03 are...."

11. Article 5. Enforcement, Penalties. I suggest that the enforcement provisions of SB 267 be incorporated into the legislation. Assistant Attorney General Jon Tillinghast should be contacted on this matter; he has a copy of the draft SSSB 406.

12. Sec. 30.25.230. Suggest wording:
"... into the causes, effects, prevention, and removal of pollution...."

13. Sec. 30.25.040. Suggest wording:
"Third party damage claims by any single person shall be...."

14. Sec. 30.25.250 (6). Suggest wording:
"...after the department receives notice that the claimant, the department and the person causing the discharge cannot agree as to the amount of the damage claim."

Delete "...receives notice of claims....of this chapter."

15. Sec. 30.25.270 (1), replace "commission" by "department."

16. Sec. 30.25.280. Delete "(1) and (2)"

17. Sec. 30.25.350. Replace "commission" by "department."

18. Sec. 30.25.380 (5). Suggest wording:
"...to any state or foreign nation and those commonly known as...."

19. Sec. 30.25.380 (14). Suggest that "this state" be replaced by "the state."

20. Sec. 46.03.750 (d), 760, 770, 780 (a), 790 (a) revisions. Suggest that wording of SB 267 be incorporated, where possible. Again, I suggest consultation with Jon Tillinghast.

cc: Ms. Fran Ulmer
Mr. Mike Whitehead
Commissioner Walter Parker

M E M O R A N D U M

TO. Senator Chancy Croft

FROM: Tom Bliss

RE: Tanker Trip

DATE: January 15, 1976

On January 4, 1976, I boarded the ARCO tanker PRUDHOE BAY, a 70,000 DWT crude oil tanker built in 1971 to transport crude oil from ARCO's oil platform at Drift River to points south.

This tanker is ARCO's pride and joy. I gathered this from the crews comments and from the assumption that ARCO would not allow me to board anything less. The reason for the trip was to determine how many of the safety features we require in SB 405-406 were already in use and how the lack of these features affected the handling of the vessel.

I have already described to you my rather traumatic adventure boarding the PRUDHOE BAY from Senator Tillion's pilot boat. Once aboard, the pilot took me to the bridge where I was introduced to the Captain of the vessel and the mates on shift.

Having read about these vessels and having seen pictures of them did not prepare me for its physical size - 832 ft. long, 200 ft. wide, drawing 40 ft. of water. This ship is gigantic and still it is less than one-third the size of six ships now scheduled for the Valdez run.

Everyone associated with the PRUDHOE BAY was courteous and gracious. They were also fanatics about tankers and believe ARCO's are the best in the world.

During the ten hours I was on board, I had the opportunity to observe the operation. The crew was professional and efficient. Each of the 28 crew members knew his job exactly and knew what the ship was doing. They also seemed to know each others duties - double and triple-checked each chore. The ship confronted no unusual weather or icing conditions. There were no mishaps. Iceburgs enroute to Drift River from Homer were frequent, often being ice flows, but had little or no effect on the handling of the ship.

According to the pilot, ice is the most serious hazard confronting a tanker on this particular route. The pilot is able to track the direction and thickness of the ice flow on the radar screen. The PRUDHOE BAY was equipped with one radar. We require two. If the one had broken down.....

During loading at the platform a change in tide often jams ice between the platform and the ship, sometimes causing all the tie-down ropes (14) to snap and the ship to be forced away from the platform. Tanker and platform personnel state that they can shut off the flow of oil and

unhook the loading arms in three minutes without spilling any oil. I asked how much time they generally have to accomplish this task and was told that "most" ships, upon observation of an oncoming ice flow, will stop loading or cut loading back to 50%. If the ice becomes a problem, they untie and leave the platform. When I asked the least amount of time they have been given, a platform worker said "less than 30 seconds". The oil left in the loading arm spilled onto the deck of the tanker. All said that no oil had ever reached the water.

I found the docking of the ship at the platform interesting. I wanted very much to see how this was going to be accomplished because it has not been fitted with lateral thrusters and did not have twin screws. The pilot did it by heading the ship into the oncoming tide and using the current to maneuver the bow of the ship closer to the platform. The procedure took about one hour - not counting the two hours of extra time spent waiting for the tide to reach its peak flow. Statements by platform and ship crew indicated this landing was a fast one and that many times landing can take as much as six hours to complete, depending on wind tides and icing conditions.

The Captain said the ship was fitted with segregated ballast tanks and he went into a lengthy explanation describing how a system like that worked. He was very proud of the one on his ship. Unfortunately, the ship required more ballast during winter weather than could be carried in the two ballast tanks so he also had one cargo tank full. He explained how the contaminated water in this tank was piped on shore to a holding tank where it was processed. He said that the processed water, when returned to the ocean, was cleaner than when taken out. Later that day in the Kenai airport bar, I talked with some fishermen. They claimed that frequent large slicks of sludge originated from the onshore tanks.

The PRUDHOE BAY is not equipped with an inert gas system - something we require to prevent the vessel from blowing up, and also for the added protection of the crew when they are required to enter a tank for maintenance or cleaning. Ice blocking a valve or pipeline and preventing the loading of the tank is the main reason crew would enter a tank in the winter. Although nothing happened the day that I was there, one week before a Tesoro tanker had an icing problem with a valve inside a cargo tank. As you remember, these tanks when not cleaned, trap gases emanating from cargo clingage on the tank walls. The Tesoro tanker did not have an inert gas system and the crew member sent to clear the valve was required to wear a clean air breathing device. A mate was stationed on deck to watch him in case a problem arose. The Captain of the vessel wanted to get a first hand look at the progress of the crew member and decided to enter the tank for a better view. He did not put a breathing device on although it was offered to him by the mate on watch. The Captain was immediately overcome by fumes and collapsed. The mate saw him drop and entered the tank to get him out. The mate was also overcome by fumes and he dropped. The crewman, seeing what had happened, attempted

to revive the Captain by putting his personal breathing device on the Captain. The crewman was also overcome. All three men died. Total elapsed time - less than four minutes.

The PRUDHOE BAY did have two power sources as required by your bill. It did not have a double bottom. It did have a docking collision avoidance system which was demonstrated but not used.

The crew of the PRUDHOE BAY was convinced their company had taken every reasonable precaution for the safety of themselves, their ship, and the environment.

M E M O R A N D U M

TO: Senator Chancy Croft

FROM: Tom Biss

RE: SB 405-406

DATE: January 16, 1976

On January 14, I talked to Mr. Virgil Keith of the Engineering Computer Optomoptics, Inc. concerning the added cost of including the nine safety features in the super tankers that we propose in SB 405-406. Mr. Keith stated that to include our safety features while building the ship would add five percent to the total cost. To retrofit the features, excluding double hulls, would cost eight to ten percent onto the cost of the ship.

DATE: February 11, 1976

MEMORANDUM

TO: Senator Chancy Croft

FROM: Tom Biss

On February 11 I called Virgil Keith per your request and asked him for a description of the various tankers that have been designated for the TAPS run.

Virgil listed by company each ship that was described to him on January 15 in San Diego. None of the tankers designated for the TAPS run will meet all of the maneuverability requirements - back power, controllable pitch propellers or lateral thrusts - set forth in our bill.

SHELL OIL COMPANY will have two tankers of 188,000 DWT. These tankers will include double bottom, inert gas system, LORAN-C receivers and a segregated ballast system.

ARCO will have two tankers identical to the Shell Oil Company tankers. In addition ARCO will have three 120,000 DWT ships. None of these three ships will meet the requirements set forth in SB 406. They will be retro-fitted with a LORAN-C receivers.

MOBILE OIL COMPANY will have one 130,000 DWT ship. This ship has a segregated ballast system, inert gas system and a LORAN-C receiver. It will not have a double bottom.

SOHIO will have two 80,000 DWT ships that will be retro-fitted with LORAN-C receivers, but will have none of the other safety requirements. They will have three 129,000 DWT ships which are presently being built in the Sun shipyard in Chester, Penn. These three ships will meet or exceed all of the requirements set forth in our bill (except maneuverability characteristic). Specifically, these three ships will have double hulls..

In addition, SOHIO will have six 165,000 DWT ships that will have segregated ballast systems and LORAN-C receivers but will fail to meet the rest of the safety requirements.

EXXON will have two 70,000 DWT ships which were built in 1965. These two ships will only have LORAN-C receivers and must be retro-fitted for that feature. EXXON has three 76,000 DWT ships built in 1969, with the same characteristics as the other two. The most significant characteristic lacking in the EXXON ships is that they have no segregated ballast systems whatsoever.

February 11, 1976

CHEVRON will have three 70,000 DWT ships that again will be retro-fitted with the LORAN-C receivers.

In addition, the NASSCO, a ship building yard in San Diego, is building six 90,000 DWT ships complete with double bottoms to be finished this year. These ships have not been committed to the TAPS run. This same shipyard built four 90,000 SWT ships with double bottoms last year and by 1977 will have built 15. None of these ships has beencommitted to the TAPS run.

CHEVRON has had six 35,000 DWT ships built by the FMC Corporation in Portland, Oregon. These ships have double hulls and have been designated to run to the Standard Oil Company refinery in Kenai. These ships have lateral thrusters and controllable pitch props. They were the first tankers built by this particular company which has specialized in building barges. These ships are probably the most advanced, ecologically sound tankers available in the world today. They are designated to beging the run into Kenai this spring, probably as soon as this month. An interesting comment about these particular ships is that they cost 17 million dollars apiece,including all of the safety characteristics that I have listed. Two other 35,000 DWT ships built by another shipyard in the U. S. but without the safety r features required, cost 19 million dollars apiece.

Virgil Keith will be testifying at the Coast Guard hearings in Anchorage on February 24 concerning the Valdez vessel traffic control system. Virgil has stated that he feels it would be beneficial to him if I were to attend these particular hearings in Anchorage. If you feel that my presence in Anchorage would be beneficial, I will make a tremendous sacrifice and do your bidding. As you know, I would never even contemplate a journey like this were I not convinced that you are going to be the Governor of Alaska three years hence.

As a final note, Virgil has stated that the ships the companies listed in San Diego varies from the list they present when they go to Washington, D. C. Virgil stated that for some reason that he can't quite understand the companies love to juggle the ships depending upon the audience to whom they are speaking. So this list may or may not be accurate.

Tom Biss

Soapy

TB/bf

M E M O R A N D U M

TO: Senator Chancy Croft

FROM: Tom Biss, Administrative Assistant
Senate Democratic Caucus

DATE: January 28, 1976

I talked to Virgil Keith and Joe Porricelli of ECO, Inc. in Maryland concerning the added cost of the safety features included in S.B. 406. They said that there will be approximately thirty tankers used in the Valdez - Los Angeles run. The tanker presently costs $70,000,000. each and that our legislation would add between five and ten percent to the cost of each ship. Our bill would cost the oil companies between $100,000,000. and $200,000,000.

Bravely,

Tom Biss
Administrative Assistant

TO: BILL MAGUIRE
FROM: STU HALL
RE: DIGEST OF SB 405 (ALASKA STATE PORT COMMISSION)

I 1. DECLARES AS LEGISLATIVE POLICY THE NEED FOR COMPREHENSIVE PLANNING FOR PORT FACILITIES DEVELOPMENT AND FOR EFFECTIVE, UNIFORM REGULATION OF MARINE TRAFFIC IN PORTS, HARBORS AND NAVIGABLE WATERWAYS OF STATE TO COMPLEMENT EXISTING FEDERAL LAW AND REGULATION.

II 2. CREATES 5-MEMBER ALASKA STATE PORT COMMISSION IN DEPT. OF COMMERCE (SHIFTS TO DEPT. OF TRANSPORTATION IF ONE IS CREATED BY LEGISLATURE) APPOINTED FOR 4-YEAR STAGGERED TERMS BY GOVERNOR, CONFIRMED BY LEGISLATURE. ESTABLISHES QUALIFICATIONS FOR COMMISSION MEMBERS; PROVIDES FOR ITS ORGANIZATION, POWERS, DUTIES; AUTHORIZES APPOINTMENT OF EXECUTIVE OFFICER. PROVIDES $100 A DAY COMPENSATION PLUS PER DIEM AND TRAVEL EXPENSES.

IV 3. REQUIRES COMMISSION TO DEVELOP COMPREHENSIVE MASTER PLAN FOR PORTS, HARBORS, PORT FACILITIES DEVELOPMENT; REQUIRES COMMISSION TO REVIEW AND MAKE RECOMMENDATIONS TO COMMISSIONER OF PUBLIC WORKS CONCERNING PORT FACILITIES GRANTS(AS 30.15) TO ENSURE CONFORMITY WITH MASTER PLAN. REQUIRES STATE PERMIT ISSUED BY COMMISSION FOR CONSTRUCTION, OPERATION OF PORT FACILITIES. PERMITS STATE CONSTRUCTION, OPERATION OF PORT/HARBOR FACILITIES. ~~PERMITS STATE CORPORATION OPERATE, MAINTAIN FOREIGN TRADE ZONE.~~ ((MORE TO COME)).

LA01 0017 12.21 LA11 0027 12.21 09/22/75

TO: BILL MAGUIRE; FROM: STU HALL, RE: DIGEST OF SB 405, CONT'D.

4. PROVIDES FOR EXCLUSIVE STATE-REGULATION, OWNERSHIP, OPERATION OF OFF SHORE DEEPWATER PORT FACILITY, AND DEFINES SAME.

V 5. REQUIRES COMMISSION TO ESTABLISH, PROMULGATE, MAINTAIN, COMPREHENSIVE UNIFORM SYSTEM OF PILOT RULES, OTHER MARINE TRAFFIC REGULATIONS NOT IN CONFLICT WITH FEDERAL LAW OR REGULATION. ESTABLISHES SPECIAL PROVISIONS FOR TANKERS OF 40,000 DEADWEIGHT TONS OR MORE, PRESCRIBING SPECIAL SAFETY FEATURES REQUIRED OF VESSELS OF THAT SIZE THAT MAY NAVIGATE STATE'S WATERS WITHOUT TUG ESCORT; OTHERWISE TUG ESCORT REQUIRED (COMPARABLE TO BILL PASSED BY WASHINGTON STATE LEGISLATURE THIS YEAR).

VI 6. PROVIDES FOR PORT ADMINISTRATION, THE COMMISSION'S JURISDICTION WITH RESPECT TO MUNICIPAL PORTS, HARBORS, AND FOR ENFORCEMENT OF STATE PORT, HARBOR LAW, REGULATIONS; ESTABLISHES PENALTIES FOR VIOLATION THEREOF.

7. BILL INCLUDES ABANDONED & DERELICT VESSEL ACT, SUCH THAT WAS ENACTED PER CH. 131, SLA 1975 (SCS CB 31, SPECKING), TO BE ADMINISTERED TEMPORARILY BY THE DIVISION OF HARBORS AND HARBORS, DEPT OF PUBLIC WORKS, I.E., UNTIL THE STATE PORT COMMISSION IS ESTABLISHED. MORE TO COME ON THIS DIGEST. S.C.H.

LA01 0018 12.30 LA11 0028 12.30 09/22/75

TO: BILL MAGUIRE; FROM: STU HALL; RE: DIGEST OF SB 405, CONCLUDED

V 8. CONSTITUTES STATE PORT COMMISSION AS BOARD OF MARINE PILOTS, DELETES AUTHORITY TO REGULATE PILOTAGE FEES (IT EFFECTIVELY LEAVES THAT TO NEGOTIATION BETWEEN PILOTS AND SHIPPING COMPANIES). PROVIDES FOR SPECIAL CERTIFICATION FOR MARINE PILOTS OF OIL TANKERS OVER 40,000 DEADWEIGHT TONS, REQUIRES SPECIAL TRAINING FOR THEM PRIOR TO CERTIFICATION.

9. REQUIRES COMMISSION TO UNDERTAKE STUDIES IN SEVERAL AREAS: (1) SURVEY, INVENTORY OF ALL EXISTING PORT, HARBOR FACILITIES PRIOR TO DEVELOPMENT OF MASTER PLAN; (2) AN ENVIRONMENTAL, ECONOMIC FEASIBILITY STUDY OF ESTABLISHMENT OF ADDITIONAL PORT, HARBOR FACILITIES IN LOCATIONS OTHER THAN THOSE PRESENTLY LOCATED IN STATE (INCLUDING METHODS OF FINANCING SAME); ALSO, INCLUDING AREA, FEASIBILITY OF CONSTRUCTING OFFSHORE DEEPWATER PORT FACILITIES; (3) FEASIBILITY OF STATE VESSEL REGISTRATION UNDER FEDERAL COASTWISE SAFETY ACT OF 1971. END. STU. DIGEST OF SB 405 TO FOLLOW.

LA01 0019 12.36 LA11 0029 12.36 09/22/75

TO: BILL MAGUIRE
FROM: STU HALL
RE: DIGEST OF SB 406 (CERTIFICATES OF INSURANCE--OIL TERMINAL FACILITIES, MARINE CARRIERS ENGAGED IN TRANSPORTATION OF OIL, PETROLEUM PRODUCTS AND OIL BY-PRODUCTS).
1. DECLARES LEGISLATIVE POLICY AS TO NEED FOR REGULATION OF OIL TRANSFER FACILITIES, CARRIERS ENGAGED IN MARINE TRANSPORTATION OF OIL, PETROLEUM PRODUCTS, BY-PRODUCTS.
2. CHANGES ALASKA STATE PORT COMMISSION (SB 405) WITH ADMINISTRATION, ENFORCEMENT OF THE ACT.
3. PROHIBITS DISCHARGE OF OIL, PETROLEUM PRODUCTS, BY-PRODUCTS INTO OR UPON COASTAL, INSIDE COASTAL WATERS OF STATE (SEE ALSO AS 46.03).
4. REQUIRES CERTIFICATES OF INSURANCE TO BE OBTAINED BY OIL TRANSFER (TERMINAL) FACILITIES, MARINE CARRIERS TO OPERATE IN STATE; PROHIBITS OPERATION WITHOUT SAME. REQUIRES ANNUAL PAYMENT OF PREMIUM, AND PROVIDES PROCEDURE FOR ESTABLISHMENT OF THE PREMIUM. APPLICANTS FOR INSURANCE CERTIFICATE MUST DEMONSTRATE ABILITY TO PROVIDES NECESSARY EQUIPMENT, PERSONNEL, SUPPLIES TO PREVENT, CONTAIN, REMOVE DISCHARGES OF OIL, OTHER POLLUTANTS. SPECIFIES INFORMATION THAT MUST BE INCLUDED IN APPLICATION FOR CERTIFICATE OF INSURANCE. SETS FORTH EXEMPTIONS FROM ACT. MORE TO COME. STU.

LA01 0020 12.44 LA11 0030 12.44 09/22/75

TO: BILL MAGUIRE; FROM: STU HALL; RE: DIGEST OF S.B. 406, CONCLUDED:
5. PRESCRIBES PROCEDURES FOR OIL SPILL EMERGENCIES, REQUIRES REMOVAL OF PROHIBITED DISCHARGES, PROVIDES FOR ENFORCEMENT AND PENALTIES--PENALTIES TIED INTO EXISTING STATE WATER POLLUTION CONTROL ACT (AS 46.03).
6. ESTABLISHES COASTAL PROTECTION INSURANCE FUND INTO WHICH ALL INSURANCE PREMIUMS SHALL BE DEPOSITED, PROVIDES THAT COST OF OIL SPILL CLEAN-UP BE CHARGED TO THAT FUND. PROVIDES FOR THE AWARD OF DAMAGES TO CLAIMANTS AGAINST THE FUND FOR THOSE SUFFERING LOSS AS A RESULT OF OIL SPILL, PROVIDES FOR ARBITRATION OF CLAIMS WHERE PARTIES ARE IN DISAGREEMENT. PROVIDES FOR DISBURSEMENTS FROM AND REIMBURSEMENTS TO THE FUND. ESTABLISHES POLICY OF STRICT LIABILITY FOR OIL SPILL.
THAT'S IT, BILL; IF ANY QUESTIONS PLEASE CALL -- THIS "TERMINAL MACHINE" GETS TO BE A BIT TEDIOUS. PLEASE ACK. STU.

Crowley Maritime Corporation
3812 SPENARD ROAD • ANCHORAGE, ALASKA 99503 • (907) 274-9541

November 21, 1975

Senator C. Croft
425 "G" Street
Suite 710
Anchorage, Alaska 99501

Dear Chancy:

As recently discussed, I had mentioned that I would send some comments over to you concerning House Bills 33 and 34, as well as on Senate Bills 405 and 406. Basically House Bill 33 and Senate Bill 405 appear to establish an Alaska State Port Commission which is not too dissimilar from what is already in existence in several other states.

I rather suspect that several arguments may be generated and used in opposition to both House Bill 33 and Senate Bill 405. In an era of considerable government control at all levels, it is difficult to convince people of the need for more control. Granted that there may be remaining situations which are not currently handled by specific government agencies, and which for uniformities sake, it might be desirable to place under one umbrella, the possibility of expanding the role of an existing agency might be considered. From the standpoint of the individual who has to deal with the government, the creation of yet another agency is not a very attractive consideration.

House Bill 34 and Senate Bill 406 appear to cause more of a problem. There are several aspects of these bills that should be considered. The title of the acts speaks of issuance of certificates of insurance. This would provide funding for the various activities that both House Bill 34 and Senate Bill 406 would authorize the Alaska Port Commission to engage in. This basically amounts to taxation of a specific segment of the public to finance a new government agency. It would be somewhat discriminatory in that the services offered by the proposed Alaska Port Commission would affect a much broader segment of the public than the group

being required to fund it. Really, what should be considered here is the intent of House Bill 34 and Senate Bill 406. Under Senate Bill 406, Section 30.25.010, Declaration of Policy and Purpose, the bills state that the highest and best uses of the seacoast of the state are for public and private recreation, and as a source of public and private commerce in fishing and gathering of other marine life. Historically, Alaska's fisheries have been one of the mainstays of the economy and rightfully deserve protection from potential harm be it mismanagement or pollution. Section 30.15.010 further states that to protect these resources, the coastal waters and adjoining public lands must be kept in as close to pristine condition as possible. Again, this is a laudable goal, however, perhaps the mechanism to accomplish this already exists. Further notice under Section 30.25.010 (c) states that the transfer of hydrocarbons under a variety of circumstances is considered as a hazardous undertaking, and that further the state interests outweigh any economic burdens imposed by the legislature upon those engaged in transferring hydrocarbons. Would it be reasonable to paraphrase this as, "the burden of protection is upon those engaged in transferring hydrocarbons"? In brief, if we are concerned about this aspect of commerce, let's assure ourselves that the hazards are controlled, and if possible, without the creation of additional levels of government.

Section 30.25.040 (d), Operation Without A Certificate Prohibited, states that a condition precedent to the issuance or renewal of a certificate of insurance, the commission shall require payment of an annual insurance premium. Here again, we are back to taxation to accomplish a purpose that may be more effectively handled in other manners.

Section 30.25.060, Scope of Regulations, states under items (3) and (4) that the commission shall promulgate regulations to develop procedures, methods and means and equipment to be used by persons subject to this chapter and further develop procedures, methods and means and equipment to be used in the removal of oil and petroleum pollutants. These topics delve into a new science that is probably more of an art at this stage. To write regulations that would assure the objectives would be extremely difficult, if not impossible. By nature, regulations are written extremely tight, providing loopholes for those that become familiar with them, or else quite loose allowing for administrative interpretation. In either case, the objectives of the state may not be well served.

Section 30.25.110, Oil Discharge Clean-up Personnel, Equipment. This will put the state into direct competition with private enterprise and raise the question of whether this is desirable from a philosophical as well as practical standpoint. In all likelihoood, the government, be it state or federal, would be much further ahead, from a cost standpoint as well as from an operational standpoint to work with private contractors.

Article 7 - Coastal Protection Fund

Section 30.25.260, Third Party Damages. It appears that this provides a ready made fund, similar to the TAPS Fund, for third party settlements. The question here, is it really necessary in light of the liability of the carrier. What effect would the commission rulings have on normal civil liability claims that could be made through the court? With the money market being in the position it is in, it appears questionable to tie up large sums of money in essentially a trust fund when normal liability relief is available through the courts.

Section 30.25.280 (b), Funding. This references a fund limit to be prescribed by the commission. There is no provision or guidance stated as to what limit this fund should have. Conceivably, it would open a pandoras box.

In summary, I feel that the following alternatives to specific sections would accomplish the same objectives and perhaps in a somewhat more palatable manner.

1. With the objective of protecting the coastal waters and adjoining tidelands, the state should encourage professional contractors who specialize in oil pollutable abatement. This could be accommodated through the state requiring carriers to show adequate coverage by contractual arraignments or forming co-operatives with an operational capability. The requirement placed on carriers through operating stipulations. This would allow the carriers greater flexibility in providing coverage for oil spill containment and cleanup without further taxation.

2. Encouraging the use of professional contractors would not place the State into competition with private enterprise and would rather accomplish the overall objectives at a reduced cost with State regulatory control.

3. Delete the insurance fund or set guidelines for total amounts with reductions through elimination of the State capitalizing equipment and maintaining personnel on the

payroll. It is my personal feeling that the public is not overly enamored of government getting into another business. Even the Coast Guard would like to get out of the "strike force" equipment business and merely supervise oil spill abatement.

4. Delete the requirement for an available fund to be used for paying third party damages. This would reduce the revenue needed to be raised in that only supervisory costs would be incurred and again make the whole matter of raising revenue somewhat more palatable. Third party litigation including the government can best be handled through the courts. There is the possibility that third party relief through arbitration with the Port Commission would not preclude further relief through civil court action. This is an area that should be looked into.

These comments do not cover all aspects of the proposed legislation. Yet, I feel they do address themselves to some of the more important aspects from Crowley Environmental Services standpoint. I would like the opportunity to further discuss this with you after you have had time to read and digest the foregoing.

Sincerely yours,

CROWLEY ENVIRONMENTAL SERVICES

D. S. Braden
General Manager

DSB:cks

Federal Maritime Commission
Washington, D.C. 20573

Office of the Chairman

January 20, 1976

Mr. Stuart C. Hall
Senior Legislative Counsel
Alaska State Legislature
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Mr. Hall:

In your letter of September 24, 1975 you requested that the Federal Maritime Commission review Alaska Senate Bills 405, 406 and ch. 131, SLA 1975 for possible conflicts with its jurisdiction. In response to that request we offer the following comments.

First, the provisions set forth in ch. 131, SLA 1975 (abandoned and derelict vessels) do not appear to affect any statute or regulation administered by this agency. We therefore can provide no comments on this particular piece of legislation.

Second, Senate Bill No. 406 (insurance certificates for oil transfer facilities and marine carriers of oil, petroleum products and the regulation thereof) would appear to duplicate, to some degree, the provisions of the Federal Water Pollution Control Act (FWPCA). A number of states, including Florida, Massachusetts, California, and Maryland, have in the past either enacted or contemplated enactment of water pollution legislation. At least with respect to the Florida legislation, legal arguments were made that Federal legislation under the FWPCA had preempted the field, and therefore, the Florida law was invalid. The matter went to the Federal courts, and the Supreme Court ruled in *Askew, Governor of Florida, et al. v. American Waterways Operators, Inc., et al.*, 411 U.S. 325 (1973) that, with respect to the particular law involved, such state duplicating legislation did not invade a regulatory area preempted by the FWPCA.

Third, Senate Bill No. 405 (Alaska State Port Commission) does not appear to conflict with any of the statutes or regulations administered by this Commission. However, if enacted, the bill does contain provisions which may subject the Alaska State Port Commission to regulation by this agency. Specifically, sections 30.20.160 and 30.20.190 would appear to make the Port an "other person" as defined in section 1 of the Shipping Act, 1916 (46 U.S.C. 801), and require the filing of terminal tariffs with this Commission pursuant to General Order 15 (46 CFR 533).

It is also possible that if the Port Commission leases terminal facilities to private terminal operators such leases may require filing with the Federal Maritime Commission under section 15 of the Shipping Act (46 U.S.C. 816).

Enclosed you will find copies of the various statutes and regulations discussed herein. We hope that the information will be of assistance in your consideration of the proposed legislation.

Sincerely yours,

Karl E. Bakke

Karl E. Bakke
Chairman

Enclosures

WASHINGTON, D. C.
MERCHANT VESSEL PERSONNEL

5860

DATE: 10 JUL 1975

SUBJECT: State of Washington Bill No. 527, enacted 29 May 1975

FROM: Chief Counsel

TO: Chief, Office of Merchant Marine Safety

1. In an effort to reduce the danger of oil spills in certain congested areas the State of Washington has legislated a law requiring "all" oil tankers -- i.e., those U.S. tankers registered in the foreign trade, all foreign tankers, and all U.S. tankers enrolled in the coastwise trade, of 50,000 DWT or greater -- to employ a Washington State licensed pilot while navigating in Puget Sound and adjacent waters. Subject Act also prohibits oil tankers greater than 125,000 DWT from operating in certain areas, and prohibits oil tankers of 40,000 to 125,000 DWT from operating in certain areas unless they either satisfy enumerated standard safety features or are under the escort of tugs meeting specified requirements. The Act directs studies related to vessels carrying other potentially hazardous materials.

2. I believe that the subject matter of the Act is preempted by federal law, and imposes an unreasonable restriction upon interstate commerce in contravention of the Commerce Clause, Art. I, Clause 3 of Section 8. It is also in conflict with federal statutory authorities which provide for the development of international maritime standards within the framework of IMCO, thereby seriously interfering with the Executive authority in Foreign Affairs.

3. While Congress has left to the States the regulation of pilotage in the bays, inlets, rivers, harbors and ports of the several states "...until further provision is made by Congress..." (46 U.S.C. 211), it has also required that "every coastwise seagoing steam vessel subject to the navigation laws of the United States...(i.e., all coastwise vessels subject to the inspection by the Coast Guard) not sailing under register, shall, when underway, except on the high seas, be under the control and direction of pilots licensed by the Coast Guard." (46 U.S.C. 364). Although "..title 52 of the Revised Statutes shall [not] be construed to annul or affect...the laws of any State, requiring vessels entering or leaving a port in any such State...to take a pilot duly licensed or authorized by the laws of such State..." (46 U.S.C. 215), the limitation does not apply to coastwise steam vessels. (Id.) These statutes have been consistently construed to mean that a State cannot require pilotage on an American inspected vessel on a

coastwise voyage unless it is sailing under register. This has recently received support in the enactment of the Ports and Waterways Safety Act, P.L. 92-340, July 10, 1972 wherein Congress again recognized the right of a State to require pilots on self-propelled vessels engaged in the foreign trades while leaving pilotage requirements for coastwise vessels under federal jurisdiction. See Section 101(5). (Emphasis added.)

4. The Supreme Court has interpreted the Supremacy Clause (Article VI) of the U.S. Constitution as providing the necessary vehicle for federal pre-emption of state laws in which there is conflict. The federal government has long been tasked with the responsibility to regulate maritime safety. With the passage of the Ports and Waterways Safety Act of 1972, P.L. 92-340, in July 1972 the federal government, through the Coast Guard, has broadened maritime safety authority to affirmatively include environmental considerations in addition to safety aspects. The purpose of the PWSA is to promote the safety and ervironmental quality of our ports, waterfront areas and the navigable waters of the U.S. -- exactly what the Washington Act proposes to do. Specifically, §201 of the PWSA tasks the Coast Guard with the responsibility of establishing design and construction criteria for vessels, including oil tankers. The State of Washington's attempt to impose standard safety features on certain oil tankers (Sec. 3(2)(a)-(e)) is violative of the pre-emption doctrine. Kelly v. State of Washington, 302 U.S. 1 (1937) recognized that state structure and equipment requirements on vessels would be preempted by the necessity for uniform federal regulation. Further the prohibition of oil tankers greater than 125,000 DWT from entering Puget Sound, and the tug escort requirements, are also violative of the preemption doctrine. House Report No. 92-563 accompanying H.R. 8140 at page 8 recognized the need for uniform federal regulation in maintaining vessel traffic services and systems for ports, harbors, and other waters subject to congested traffic. Burbank v. Lockheed Air Terminal, 5 ERC 1321 (U.S. 1973) supports this preemption conclusion. The Court recognized that, even though intended to protect the local area from noise pollution, federal control over air commerce preempted the City of Burbank's ordinance prohibiting jet airplanes from landing at the Hollywood-Burbank Airport between 11 P.M. and 7 A.M. the next day. Likewise, comprehensive federal control over maritime commerce preempts Washington's legislation.

5. The Washington Act is also unconstitutional because it creates an undue burden on interstate commerce [illegible] standard safety feature requirements unduly burden ISC. Compare with Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945)

Subj. State of Washington Bill No. 527, enacted 29 May 1975

(state law limiting the length of railroad cars created an undue burden on ISC); and Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520 (1959)(state law requiring mud flaps on all trucks operating in the state created an undue burden on ISC.). Distinguish Huron Portland Cement Co. v. Detroit, 362 U.S. 440 (1959) which upheld Detroit's smoke abatement ordinance because it did not create an undue burden on ISC (and was not preempted by Federal regulation). However, note that the ordinance did not impose structural requirements for vessel's boilers. Nor is Askew v. American Waterways Operators, 411 U.S. 1325 (1973) dispositive. The Court avoided deciding whether the provision of the Florida Act requiring containment gear impermissibly invaded a subject requiring uniform federal regulation. Concerning the prohibition from entry and tug escort requirements, though preemption is the most persuasive argument for invalidating these provisions, I believe they also would create an undue burden on ISC -- they would impede the free movement of both interstate and foreign waterborne commerce.

6. Another major area of concern with the Act is the effect it will have on the efforts of the U.S. to achieve internationally acceptable marine safety and environmental protection standards. The elaboration of Solas 74 and the 1973 Marine Pollution Convention are recent examples of the actions taken to provide a system of equality which will not unduly burden commerce. Congress has, recognized the impracticality of local unilateral action creating systems of inequalities by mandating, in Section 201(7) of PWSA, 46 USC 391a(7), a requirement of equality consonant with international treaties, conventions, or agreements for the protection of the marine environment.

7. In view of the broad statutory and regulatory power of the Federal Government, acting through the Coast Guard, in all fields related to maritime and environmental safety, there can be no doubt that the field encompassed by the Act of the State of Washington is federally preempted. The Act is also constitutionally void because it would create an undue burden on interstate commerce.

R. A. RATTI

Copy to:
G-W

COPY COPY

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
OLYMPIA

DANIEL J. EVANS
Governor

May 29, 1975

To the Honorable, the House
of Representatives of the
State of Washington

Ladies and Gentlemen:

I am returning herewith without my approval as to two sections Substitute House Bill No. 527 entitled:

"AN ACT RElating to water pollution from petroleum spills."

This bill provides, among other things, safety standards for oil tankers and other precautionary measures for prevention of major oil spills in Puget Sound and adjacent waters.

Section 4 of the bill authorizes the Utilities and Transportation Commission to implement the provisions of the act by rules and regulations. I am puzzled over this delegation of major responsibility to the commission, which has had no previous experience or expertise in the area. Nor is there funding provided which might allow the commission to do a creditable job in this new field of responsibility. Elsehwere in the bill a study is authorized on the desirability of transferring the duties and responsibilities of the Board of Pilotage Commissioners to the Utilities and Transportation Commission or any other appropriate state agency. Until there are findings determined in such study which confirm the need to assign the responsibility of implementing and enforcing the provisions of this act to the commission, I am not willing to allow a situation to exist where separate agencies in state government have substantially overlapping duties in this area of increasing importance without clear direction from the Legislature.

Section 7 provides an expiration date for the act of June 30, 1978. Few would disagree that this state must soon decide and act on long range solutions to the problems created by the transporation of oil in massive quantities in Puget Sound waters. By passing this bill, the Legislature has decided that at least in the near future, oil tankers exceeding 125,000 deadweight tons should not be permitted to enter these waters. The study provided in section 5 may well offer some additional alternatives. The expiration date, however, rather than encouraging all parties to develop sound long range solutions, would instead discourage such efforts. This state could, conceivably, find itself in the second half of the 1978 faced with unprecedented supertanker traffic in Puget Sound waters with all the attendant hazards but without any capability to prevent or reduce the risks of oil spills likely to produce catastrophic and permant damage to the unique environment of the area.

The expiration date would also leave the oil industry and others affected in an untenable state of uncertainty over permissible and impermissible activities in the transporation of oil into this area. Neither public nor private interests would be benefited by such uncertainty.

For the foregoing reasons, I have determined to veto section 4 and 7 of the bill. With the exception of those sections, the remainder of the bill is approved.

Respectfully submitted,

Daniel J. Evans/signed/
Governor

DJE:sh

OCEANOGRAPHIC COMMISSION OF WASHINGTON
312 First Avenue North, Seattle, Washington 98109
(206) 464-6272 *or* (SCAN) 8-576-6272

13 May 1975

Daniel J. Evans
Governor

Senator Gordon L. Walgren
Chairman
Senate Transportation and
Utilities Committee
433 Public Lands Building
Olympia, Washington 98504

Dear Senator Walgren:

In response to your letter of 9 May, sufficient copies of "A Prospectus on A Feasibility Study on Four Alternative Common-Use Crude Oil Terminal Systems in Washington State" are enclosed for distribution to the Senate Transportation and Utilities Committee. The cost sharing arrangement proposed in the study is $100,000 in State appropriations and about $80,000 in contribution from Trans Mountain Oil Pipe Line Corporation. Total cost is estimated at $180,000, with the final report due in January 1976. These costs do not include funds for the feasibility study of an underwater pipeline crossing at Admiralty Inlet and the Deception Pass Bridge crossing. These two studies should be conducted concurrently so that the results may be integrated.

We believe this joint government/industry study will develop significant findings which will aid the state legislature in its deliberations on an oil transportation policy.

Respectfully yours,

B. G. Ledbetter
OCW Executive Secretary

Kenneth L. Hall
Vice President, Operations
Trans Mountain Oil Pipe Line Corporation

cc: OCW Commissioners
OIW Trustees
Rep. Robert Perry

EXECUTIVE COMMITTEE: Sen. John S. Murray, *Chairman;* Sen. Don L. Talley, *Vice Chairman;* George Johansen, *Secretary;* Dr. Stanley R. Murphy, *Immediate Past Chairman*

COMMISSIONERS: Frank W. Foley, Rep. Eleanor A. Fortson, Rep. Donald G. Hansey, Garrett Horder, Jon M. Lindbergh, Sen. A. L. Rasmussen, Rep. Rick Smith

EXECUTIVE SECRETARY: B. G. Ledbetter

senate transportation & utilities committee

WASHINGTON STATE LEGISLATURE
ROOM 235 • HOUSE OFFICE BUILDING • OLYMPIA, WASHINGTON 98504 • (206) 753-5275
SEN. GORDON L. WALGREN, CHAIRMAN • SEN. AL HENRY, VICE CHAIRMAN • SEN. JOE STORTINI, VICE CHAIRMAN

May 9, 1975

Mr. B. G. Ledbetter
Executive Secretary
Oceanographic Commission
312 First Avenue North
Seattle, Washington 98109

Dear Mr. Ledbetter:

You and representatives of Trans Mountain Oil Pipeline Corporation have indicated that a jointly funded, government industry study of common-use, crude oil terminals and related facilities might provide valuable information necessary to the formulation of state oil transportation policy.

This letter is to officially request, on behalf of the Senate Transportation and Utilities Committee, that the Oceanographic Commission of Washington and the Trans Mountain Oil Pipeline prepare a brief prospectus on such a study. The prospectus should outline the scope of work, division of study tasks between TMOPL and OCW, and cost estimates and proposed sharing arrangements between TMOPL and state government. It should be planned to submit the final study report to the legislature by January, 1976.

An early reply would be appreciated.

Very truly yours,

Gordon L. Walgren
Chairman

GLW:cz

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R. PAT WANAMAKER
NAT W. WASHINGTON*
JONATHAN WHETZEL

A PROSPECTUS ON
A FEASIBILITY STUDY
ON
FOUR ALTERNATIVE COMMON-USE
CRUDE OIL TERMINAL SYSTEMS
IN WASHINGTON STATE

Prepared Jointly by the

OCEANOGRAPHIC COMMISSION OF WASHINGTON

and

TRANS MOUNTAIN OIL PIPE LINE CORPORATION

for the

SENATE TRANSPORTATION AND UTILITIES COMMITTEE
WASHINGTON STATE LEGISLATURE

13 May 1975

TABLE OF CONTENTS

		Page
I.	PURPOSE	1
II.	BACKGROUND	1
III.	STUDY APPROACH	2
IV.	STUDY TASKS	3
V.	COSTS AND SCHEDULE OF PERFORMANCE	7

I. PURPOSE

This study is proposed for joint funding by industry and state government. It would consider the development of a common-use, crude oil terminal system at four alternative areas:

- Cherry Point
- Burrows Bay near Anacortes
- Port Angeles
- West of Port Angeles

Its purpose is to (1) refine previous cost estimates, (2) examine alternative methods of financing terminal system development, and (3) identify potential impacts and conflicts among the multiple uses of marine and land resources which would be associated with such development.

II. BACKGROUND

The report by the Oceanographic Commission of Washington, Offshore Petroleum Transfer Systems for Washington State (OPTS), presented findings about the feasibility of "offshore monobuoy and related petroleum transfer facilities." These findings indicate that there would be advantages both to the public and private sectors from improving the present oil transportation system in the state. There is general agreement in government, industry, and the public on the need for change, but there is some disagreement on the nature and extent of change needed.

The OPTS report is a step towards resolution of this public policy dilemma. It compares more than 70 combinations of locations, markets, and crude oil supply on a variety of technical,

economic, environmental, social, and jurisdictional parameters. It helps eliminate most from further consideration.

It was not "site specific," however, and leaves more detailed analysis to future study, once the most attractive alternatives have been selected.

One alternative of high interest was that of a common-use system for unloading crude oil at Burrows Bay near Anacortes. Trans Mountain Oil Pipe Line Corporation, which owns and operates a common-carrier pipeline supplying all four major refineries with crude oil from Canada, has studied this alternative from a potential owner-operator point of view. It issued a report in May 1975 on its feasibility study, "Burrows Bay Crude Oil Transfer System."

These two reports and the general reaction to each indicate that there are now four common-use, crude oil deepwater port alternatives worthy of further study:

- Cherry Point
- Burrows Bay
- Port Angeles
- West of Port Angeles

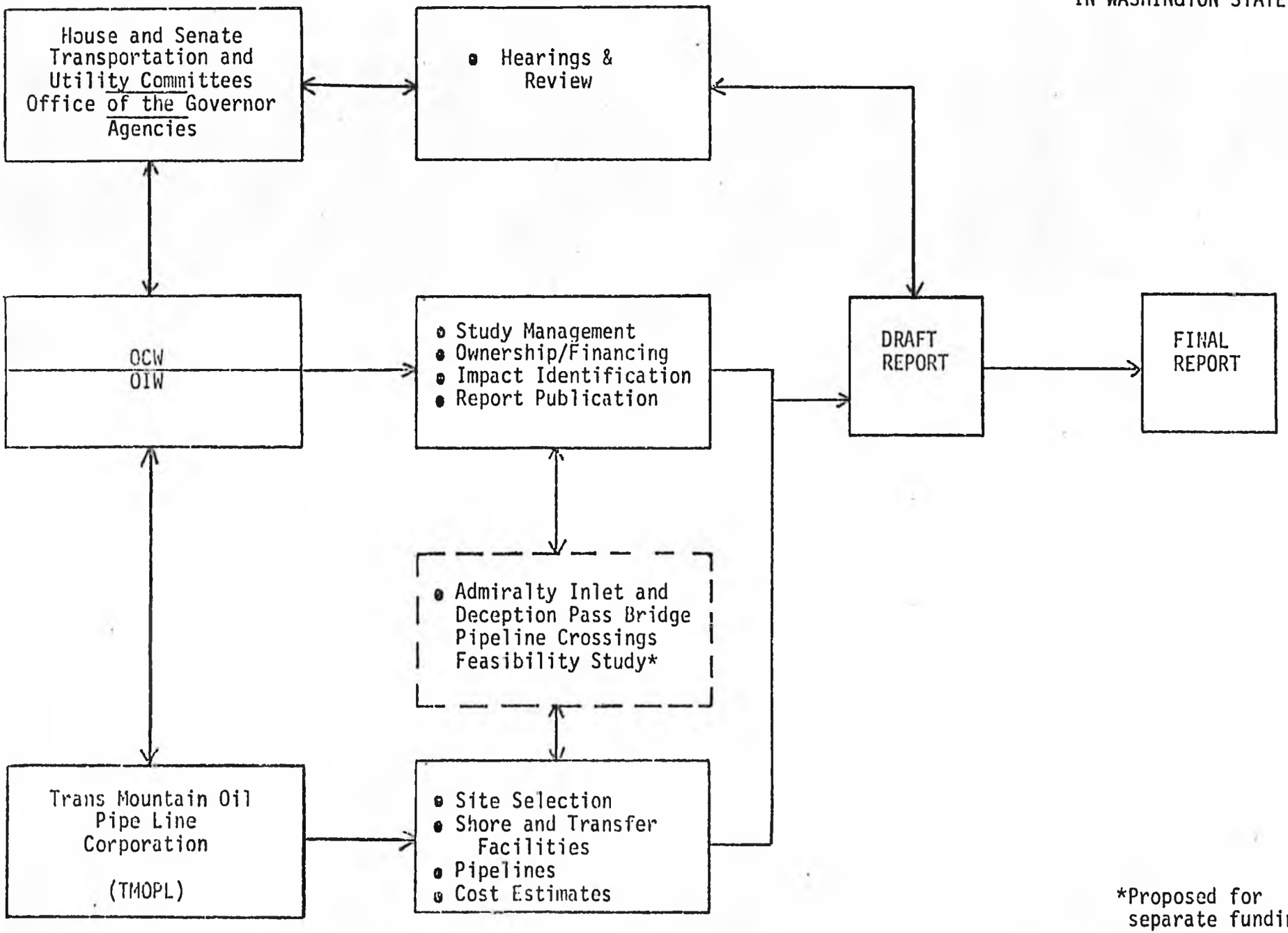
It is becoming increasingly apparent that it would be easier for the legislature to arrive at an equitable state policy on oil transportation if industry and government would develop joint estimates and findings and work toward identifying acceptable compromises.

III. STUDY APPROACH

The study tasks will be completed by an integrated team of private companies and government, with overall management and

FIGURE 1 - STUDY APPROACH

A FEASIBILITY STUDY ON FOUR ALTERNATIVE COMMON-USE CRUDE OIL TERMINALS SYSTEMS IN WASHINGTON STATE



*Proposed for separate funding

publication of the study report by the Oceanographic Commission of Washington. Figure 1 shows the overall study structure and the general areas of investigation. The Oceanographic Commission would utilize its non-profit corporation, the Oceanographic Institute of Washington, in conducting its designated study tasks. For purposes of sizing the transfer facilities, scenarios will be described for reasonable throughput levels of crude oil and the tanker fleet mix necessary to transport these volumes to meet the needs of the Northwest market. The study will not consider the movement of petroleum refined products and will assume the existing product transportation and handling schemes will remain in use. The study is constrained to a six-month period because of the necessity for consideration of the results during the expected 1976 special session of the legislature.

IV. STUDY TASKS

The six basic study tasks are as follows:

Task 1 - Engineering and Cost Estimates

Task 1a - Site Selection. Sites for a marine terminal will be selected within the general area of each of the four locations designated. Selection will be based on detailed analysis of the available published data and sufficient field work to prepare preliminary design criteria and capital cost estimates.

The report on each terminal site will include comments on water depths, shelter, maneuvering room, currents, wind, waves, navigation of approach and the presence of other marine facilities.

Bottom conditions will be investigated using seismic and sampling methods in sufficient detail to support a sound preliminary design.

Task 1b - Shore and Transfer Facilities. Transfer lines connecting the marine terminal to the receiving tanks on shore will be designed for crude oil, bunker fuel, potable water and fire protection water as required. These lines will be designed as submarine lines or carried on a causeway as best suits the selected terminal site.

Sites suitable for tank farms will be chosen on the basis of proximity to the marine terminal, soil conditions, zoning regulations, and potential environmental impact. Tankage will provide for desired crude segregation.

Task 1c - Pipe Lines. Preliminary routes will be located for pipe lines to connect the receiving facilities to the present Trans Mountain pipeline network serving the Puget Sound refineries. Location will be based on studying available maps, aerial photographs and geological data. Field investigation will be used to refine the preliminary location.

Existing data on watershed characteristics, precipitation and surface and stream run-off for the project area will be assembled. This information will be used, along with field reconnaissance, in estimating the effect on stream and river crossing design, construction costs and right-of-way stabilization. Field inquiries will be made to determine the costs of obtaining right-of-way and estimating construction clean-up costs.

Hydraulic calculations will be made for all assumed throughputs. Pipelines and pump stations will be designed accordingly. Field investigations will be conducted as required to determine the availability and cost of service facilities such as power, water, fuel, and communications.

Task 1d - Cost Estimates. Capital cost estimates will be prepared for materials and construction required to complete fully operable systems. These estimates will be in sufficient detail to permit application of parameters such as escalation, interest during construction, depreciation and capital cost allowance for the purpose of economic analysis and tariff calculations.

Estimates will be made of personnel requirements and operating costs for each of systems described. These costs will reflect current oil company and pipeline practices and operating philosophy. Provisions will be made for oil spill containment and clean-up procedures.

The cost of tug escort and berthing assistance is not normally a part of a terminal operating charge. However, a detailed investigation will be carried out for each of the locations under consideration to determine what these costs might be under current and pending legislation.

Task 2 - Owner-Operator Financing Alternatives. For each of the four terminal systems, three alternatives of public or private ownership and financing will be investigated:

a). Private ownership and operation

b) Public ownership and operation

c) Public ownership and private operation

The effects of varied institutional arrangements and financial schemes will be developed. This task will consider existing ownership and financial patterns and make use of available computer programs for financial models such as those used for the state of Texas "Seadock" program. The output will compare the overall crude oil transportation costs from tanker to refinery for each of the four common use terminal systems and the three financial/ownership schemes under study.

Task 3 - Potential Impact Identification. The OPTS report identified some of the impacts from crude oil transfer under various port alternatives. This baseline of information will be amplified by collecting additional data and information on the potential impacts of the four specific port alternatives to be studied here. Burrows Bay, for example, was discussed as a possible port alternative in the OPTS and TMOPL reports, but a detailed analysis of potential impacts was not made. Investigations must be made and verified on possible conflicts of public, private and commerical multiple uses of land and water resources.

Task 4 - Comparative Summary. This task will present a summary of results, and a comparison of the four selected alternatives designed to meet projected throughputs of crude oil for meeting the

market needs of refineries in Washington State. Analyses and comparisons will be made of costs and feasibility of installation and of public costs and benefits associated with various ownership schemes. Potential environmental changes and multiple use conflicts will be identified. This summary will facilitate the development of significant findings which will aid public policy-makers in their deliberations.

Task 5 - Review and Critique. A draft report of the study results will be made available for review and critique by the House and Senate Transportation and Utilities Committees, the Oceanographic Commission, interested local, state, and federal agencies, and private companies involved. The Oceanographic Institute and Trans Mountain Oil Pipe Line Corporation will prepare the draft report, transmit it to the reviewers, and integrate the results of the review and critique into the final report.

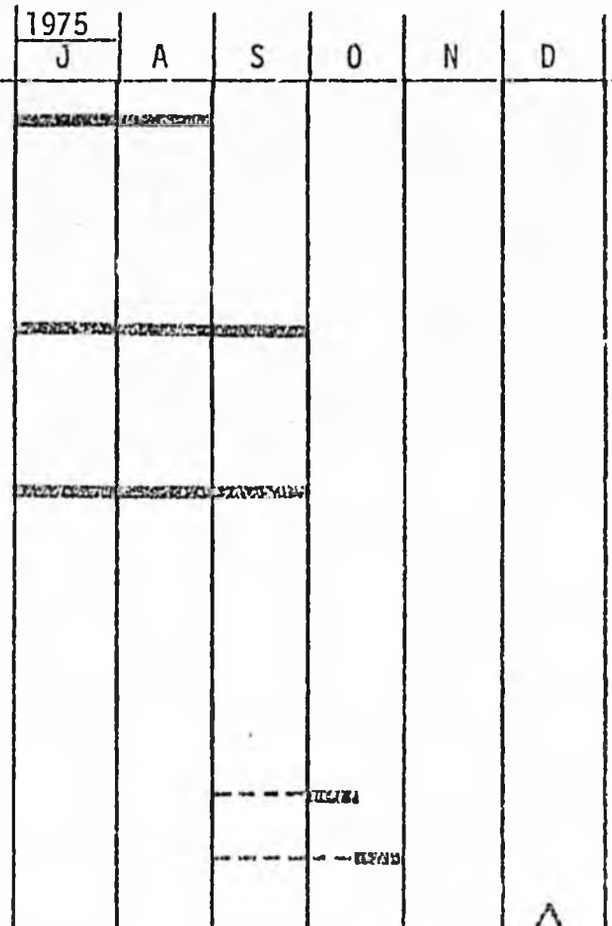
Task 6 - Final Report Preparation and Publication. The final report will be submitted to the legislature and executive by January 1976.

V. COSTS AND SCHEDULE OF PERFORMANCE

The proposed study will require six (6) months of professional effort. The total estimated cost for the study is $180,000. Cost sharing will include $80,000 contributed by the Trans Mountain Oil Pipe Line Corporation and require Washington State funding of $100,000. This cost estimate does not include funds for the Admiralty

Inlet and Deception Pass Bridge pipeline crossings feasibility study, which is an adjunct and should be conducted concurrently with this proposed study. The division of tasks between TMOPL and OCW is shown in Figure 2. Cost sharing between industry and government is based on this division of tasks.

FIGURE 2 - FEASIBILITY STUDY OF FOUR COMMON-USE CRUDE OIL TERMINAL SYSTEMS
PROGRAM SCHEDULE AND COST ESTIMATE



STUDY TASKS	Estimated Cost Sharing TMOPL	State Appropriation
1. Engineering/Cost Feasibility a. Site Selection b. Shore and Transfer Facilities c. Pipelines* d. Cost Estimates	65,000	
2. Owner-Operator Financing Alternatives a. Private Ownership & Operation b. Public Ownership & Operation c. Public Ownership & Private Operation	5,000	60,000
3. Identification of Potential Conflicts and Impact of Multiple Resources Use a. Identify gaps in data, information and existing impact assessments b. Collect Available Missing Data and Information c. Identify Potential Changes due to Alternative Actions	2,000	20,000
4. Comparative Summary	1,500	5,000
5. Review and Critique of Draft Report	1,500	4,000
6. Report Preparation and Publication	5,000	11,000
TOTAL ESTIMATED COST	$80,000	$100,000

* Does not include field work for Admiralty Inlet and Deception Pass Bridge pipeline crossings

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

Dear Captain Greiner:

The Council on Environmental Quality (CEQ) has reviewed the proposed Coast Guard regulations CGD 75-201 "Tank Vessels Carrying Oil in Domestic Trade," as published in the Federal Register of October 14, 1975, Vol. 40, No. 199, Part IV. We appreciate the extension of time given for our comments.

We agree with and support the concept embodied in these proposed regulations -- that of distributing the required segregated ballast around the ship's outer skin to perform the additional function of providing a defense against side and bottom accidents. In the past CEQ has strongly supported the provision of such "defensive space" in full double bottoms. We continue to believe that such a configuration would provide a great degree of environmental protection. However, our most recent statistical analysis of worldwide tanker spill data in relation to the six tanker designs set out in the proposed regulations indicates substantial uncertainty as to which types of accidents would cause the greatest outflows and whether any single design would be the most effective in reducing outflows. As such, we believe that reduction of oil outflows should be the most important objective of these regulations and that the Coast Guard should uniformly require tankers to be designed in such a way as to significantly reduce oil outflows from the levels permitted by the 1973 IMCO Convention.

Notwithstanding our general agreement with the Coast Guard's conceptual approach, we have a number of concerns about the formula contained in Section 157.09 of the proposed regulations. First, the formula is weighted without apparent justification toward protection against side damage versus protection against bottom damage. Yet the Coast Guard's own evaluation of worldwide spill data for the years 1969-1973 has concluded that one type of damage is "as much a problem" as the other. Second, our

Dennis M. Dooley
SPECIAL ASST. TO COMMISSIONER
STATE OF ALASKA
DEPARTMENT OF HIGHWAYS
P.O. BOX 1467
JUNEAU AK. 99801
364-2121 EXT. 111
RM 850 MCKAY BLDG
338 DENALI ST
ANCHORAGE AK. 99501
279-6122

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

RECEIVED
DEC 8 1975
CROFT & THURLOW

RECEIVED
DEC 15 1975
Dept. of Highways
Commissioner's Office
Juneau, Alaska

Dear Captain Greiner:

The Council on Environmental Quality (CEQ) has reviewed the proposed Coast Guard regulations CGD 75-201 "Tank Vessels Carrying Oil in Domestic Trade," as published in the Federal Register of October 14, 1975, Vol. 40, No. 199, Part IV. We appreciate the extension of time given for our comments.

We agree with and support the concept embodied in these proposed regulations -- that of distributing the required segregated ballast around the ship's outer skin to perform the additional function of providing a defense against side and bottom accidents. In the past CEQ has strongly supported the provision of such "defensive space" in full double bottoms. We continue to believe that such a configuration would provide a great degree of environmental protection. However, our most recent statistical analysis of worldwide tanker spill data in relation to the six tanker designs set out in the proposed regulations indicates substantial uncertainty as to which types of accidents would cause the greatest outflows and whether any single design would be the most effective in reducing outflows. As such, we believe that reduction of oil outflows should be the most important objective of these regulations and that the Coast Guard should uniformly require tankers to be designed in such a way as to significantly reduce oil outflows from the levels permitted by the 1973 IMCO Convention.

Notwithstanding our general agreement with the Coast Guard's conceptual approach, we have a number of concerns about the formula contained in Section 157.09 of the proposed regulations. First, the formula is weighted without apparent justification toward protection against side damage versus protection against bottom damage. Yet the Coast Guard's own evaluation of worldwide spill data for the years 1969-1973 has concluded that one type of damage is "as much a problem" as the other. Second, our

Dennis M. Dooley
SPECIAL ASST. TO COMMISSIONER
STATE OF ALASKA
DEPARTMENT OF HIGHWAYS
P.O. BOX 1467
JUNEAU AK. 99801
364-2121 EXT. 111
RM 850 MCKAY BLDG
338 DENALI ST
ANCHORAGE AK. 99501
279-6122

PAGE 2 NOT

IN FILE

existing tank vessels both U.S. and foreign. There is wide agreement that operational discharges from existing vessels constitute the largest contribution to oil pollution of the oceans and that segregated ballast provides the most effective means of minimizing such pollution. Retrofitting existing vessels with segregated ballast would be a major step in cleaning the seas of oil and it deserves the most serious consideration. The staggered wing tank design permitted by the proposed regulations, as modified by our comments, would provide a potentially feasible approach to retrofitting existing vessels. We would be pleased to work with the Coast Guard on developing such a program.

Thank you for the opportunity to review and comment on your proposed regulations. Please let me know if you or your staff have any questions on the matters discussed in this letter.

Sincerely,

Steven D. Jellinek
Staff Director

Captain George K. Greiner
Executive Secretary
Marine Safety Council (G-CMC/82)
United States Coast Guard
Room 8234
Washington, D.C. 20590

cc:
Adm. Robert I. Price, USCG

TANKER

STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
OLYMPIA

DANIEL J. EVANS
GOVERNOR

March 29, 1976

The Honorable Chancy Croft
Alaska State Legislature
425 G Street
Anchorage, Alaska 99501

Dear Senator Croft:

Thank you for the copy of your Senate Bill 406, a bill devoted to a subject of considerable concern to all of us now faced with the spectre of water-borne traffic in crude oil. A great deal has been said and written on this subject in recent weeks and months and I am afraid we are not too much closer to a final acceptable solution to the basic problem.

We appreciate your indication of confidence in the efficacy of our actions in using our bill as a starting point for your proposed legislation. I think your proposal carries this problem to the next logical step and we certainly wish you luck in getting favorable legislative action on your proposal.

I have no particular suggestions as to how to get favorable legislative action. I can safely predict that you will encounter stiff resistance as we did just in getting your bill passed, and probably will have it tested in the courts as well. Possibly by then you will have the benefit of our experience with the Atlantic-Richfield suit to draw upon.

There are corollary actions at the national level which are of interest to us all; revisions to the Ports and Waterways Safety Act; continuing developments in tanker safety regulations developed by the Coast Guard, etc. In my opinion all these actions at both state and federal levels must be closely coordinated if we are to insure that the best interests of all concerned are to be protected. We cannot and will not permit unilateral action at any level. This approach would surely result in decisions and actions inimical to the wellbeing of our respective states.

Again, may I say that you have our wholehearted support in your efforts with this legislation and we appreciate your expression of confidence in and support for our efforts in the same area.

Sincerely,

Daniel J. Evans
Governor

DJE: dg

STATE OF ALASK

Inter-Department Route Slip

TO:
MAIL STATION NUMBER 5100

DEPARTMENT State Senate

ATTENTION C. Croft

- ☐ Approval
- ☐ Signature
- ☐ Comment
- ☐ Contact Me
- ☐ Prepare Reply
- ☐ For Your File
- ☐ Note & Return
- ☐ Initial & Return
- ☐ Return As Requested
- ☐ Return For Approval
- ☐ Necessary Action
- ☐ Your Information

Remarks:

Tanker Superintendent

FROM:
MAIL STATION NUMBER 1400

DEPARTMENT Highways

BY _____ DATE 1-21

02-002 (REV.10/73)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF HIGHWAYS

OFFICE OF THE COMMISSIONER

P. O. BOX 1467 – JUNEAU 99802
(907) 364-2121
(TELEX 099-45-371)

January 21, 1976

Re: 00-2457

Honorable William A. Coleman, Secretary
U. S. Department of Transportation
400 Seventh Street, S.W.
Washington, D. C. 20590

Dear Secretary Coleman:

I wish to express my thanks to you and the Coast Guard for the attendance of Admiral Benkert and Mr. John Lescroart at the Pacific Oil and Ports Group meeting on January 16. Their attendance made possible an excellent exchange between the Coast Guard, the Deep Water Ports Office, industry representatives, and the representatives from the West Coast states that were present. We were able to discover quickly common ground in some areas and reduce our levels of disagreement in such sensitive areas as the location of defensible space on domestic oil tankers.

As you will remember from the discussion that you, Governor Hammond, Admiral Price and I had on the subject of defensible space in your office in November, there are several optional ways to place this space, the most common up till now being double bottoms. As a result of our meetings in December and January with industry and Coast Guard personnel, we remain convinced that the concept of defensible space as expressed in double bottoms will substantially reduce oil losses due to groundings. We also believe that some form of defensible space on the sides of oil tankers, the double hull concept, has some value in reducing losses due to collisions and rammings. However, the data is not yet as clear to us in this area as it is in the case of the relationship between double bottoms and groundings.

My staff will continue to work intensively with the Coast Guard in solving these problems as they affect the State of Alaska and other members of the Pacific Oil and Ports Group. I hope that a risk analysis that will bear the closest scrutiny can be developed for double hulls and double bottoms.

However, time is growing short. The Senate Commerce Committee will soon begin oversight hearings on this subject and other items covered in the Ports and Waterways Safety Act of 1972, and there are definite signs of further interest in the House of Representatives. It is our belief that the subject of tanker regulations is best handled through the regulatory process so that technology is not limited by law. However, we also feel that a decision must be made soon upgrading standards of defensible space to the point where we have greater assurance than we presently have that great ships operating in narrow seas will have the maximum possible protection currently available built into their hulls, navigation systems and operating rules.

Again, thank you for the time of a valuable officer like Admiral Benkert at our meeting. I hope the Coast Guard gained as much from the experience as did the members of the Pacific Oil and Ports Group. As stated before, we are getting excellent cooperation from the Coast Guard at all levels, but we feel that we must move more swiftly to upgrade currently planned construction of oil tankers and to make such plans as are possible for retrofitting the existing fleet in a reasonable time period. That is our major point of disagreement now and we think the parameters of disagreement are shrinking.

Mr. Lescroart's attendance was especially appreciated by the Alaska delegation because of the great impact that the Deep Water Port Program will have on OCS development in Alaska. We are very happy with the emphasis and stature you are giving this program.

Thank you again for the time you have personally given to this matter. It is most appreciated by those whose livelihood depends upon a successful balance between the development of off-shore oil, the carriage of oil in tankers and the protection of the living resources of the sea.

Sincerely,

Walter B. Parker
Commissioner of Highways
Chairman, Alaska Section,
Pacific Oil & Ports Group

WBP/mth

CC: Senator Croft
Jessie Dodson, Office of the Governor
Dennis Dooley, Special Assistant
Mr. John Lescroart
Admiral Hayes, U. S. Coast Guard
Admiral Benkert, U. S. Coast Guard
Task Force Members

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER / SUBPORT BUILDING
JUNEAU 99801

February 2, 1976

Mr. Tom Biss
Administrative Assistant
Senate Democratic Caucus
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Biss:

In regard to the questions you asked on the fisheries of Prince William Sound, the following information is provided:

In the salmon fishery, catches for Prince William Sound (including the Bering and Copper River) produced an average annual harvest of 4,047,323 salmon between 1960 and 1974. This average catch was 9.9% of the average statewide harvest during the same period. The harvest varied from a low of 3.8% of the statewide harvest in 1972 to a high of 18.9% of the statewide harvest in 1971.

The number of salmon fishermen also varies substantially from year to year. Between 1969 and 1975, the number involved in purse seining varied from 0 in 1972 (because of a closed season) to 291 in 1973. The number of people who drift gill netted varied from 404 in 1969 to 556 in 1973, and the number of people who set netted varied from 0 in 1971 (because of a closed season) to 32 in 1972 and 1975. Figures on the number of fishermen who participated in the other fisheries are not readily available.

The percentage value of fisheries products increased between 1970 and 1974. In 1970, the total landings of 26,019,431 pounds of fish and shellfish was 4.8% of the statewide total and at $5,559,321 accounted for 5.8% of the statewide value to the fishermen. The 1974 landings of 35,628,642 pounds of fish and shellfish, while not as high as landings in 1971 and 1973, accounted for 13.9% of the statewide total and at $11,183,481 accounted for 16.9% of the statewide value to the fishermen.

If you require further information, please do not hesitate to call.

Sincerely,

James W. Brooks

James W. Brooks
Commissioner

February 4, 1976

Mr. Tom Biss
Senate Rules Committee
Rm 644
Court Bldg.
Juneau, Alaska 99801

Dear Mr. Biss:

This is in response to your request for information regarding intertidal spawning of salmon in Prince William Sound.

Pink salmon and, to a lesser degree, chum salmon will typically spawn in the intertidal zone of streams throughout Alaska. However, in the Prince William Sound area, intertidal spawning by pink and chum salmon occurs at a significantly higher rate (range 50 to 70 percent of the spawning population) than in other areas of the state (average 10 to 20 percent of the spawning population).

I hope this adequately fulfills your request.

Sincerely,

Ed J. Huizer
Deputy Commissioner

EJH:LE:pp

Federal Maritime Commission
Washington, D.C. 20573

Office of the Chairman

October 7, 1975

Mr. Stuart C. Hall
Senior Legislative Counsel
Alaska State Legislature
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Mr. Hall:

We have received your request to analyze Senate Bills 405, 406 and ch. 131, SLA 1975 for possible conflicts with our jurisdiction.

Our staff is currently reviewing the legislation. We will notify you of our findings at the earliest possible date.

Sincerely,

Helen Delich Bentley

Helen Delich Bentley
Chairman

COOPERATIVE EXTENSION SERVICE

UNIVERSITY OF ALASKA
FAIRBANKS ALASKA 99701

Marine Advisory Programs
3211 Providence Avenue
Anchorage, Alaska 99504
(907) 278-4911

C.J.

September 9, 1975

Mr. Bill Maguire
310 K Street
Suite 701
Anchorage, Alaska 99501

Dear Mr. Maguire:

I will be sending you all of the materials concerning the meetings on the (1) conflicts of tanker traffic in Prince William Sound and (2) on the North Gulf of Alaska lease sale and the objections and questions raised by the Cordova fishermen and others.

We have had one meeting on oil tanker traffic where the different parties of interest (Coast Guard, Alyeska, National Ocean Survey) spent time on the water viewing potential problem areas and talking candidly with the fishermen. On September 23 and 24 we will culminate this experience with an open meeting in Cordova between Cordova fishermen as represented by the Cordova Aquatic Marketing Association's President and Board of Directors, the Cordova District Fisheries Union, the fish processors association, the U.S. Coast Guard and Alyeska Pipeline Service Co. I feel that we have brought the problem out into the open and are obtaining sufficient information and questions to clear up some of the problems and apply local knowledge and opinions to the gray areas.

Your reference to proposed Senate Bills #405 and #406 would have a definite bearing at this meeting and it should be a good time to explore support and validity.

Nov 17-21

We view the meetings on ~~October 22 and 23 as~~ very crucial. The CDFU has officially opposed the lease sale this year on the grounds of at least eight unsatisfactory conditions which are either unmet or unanswered. There is considerable interest on the part of state and federal agencies to participate and consider what Cordova is saying. The format for the meeting will be in the form of responses to each detailed question by the appropriate agency or agencies. More details on this meeting will be forthcoming.

I have been led to believe that the Cordova Chamber of Commerce and the City Council have not represented the truest feelings of the people of Cordova, so even within this fine town there are conflicts.

I would be interested in meeting with you to exchange ideas and working to coordinate your meetings there also.

Sincerely,

Mark I. Hutton

Mark I. Hutton
Marine Advisory Agent

MIH/cr

DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

MAILING ADDRESS:
COMMANDER (m)
17TH COAST GUARD DISTRICT
FPO SEATTLE 98771

DEC 1 1975

DEC 3 1975
CROFT & BARLOW

Senator Chancy Croft
425 G St., Suite 710
Anchorage, Alaska 99510

Dear Senator Croft:

As you are probably aware, the Coast Guard is in the process of establishing a Vessel Traffic Service (VTS) in Prince William Sound. This service will be implemented in mid-1977 in conjunction with the startup of tanker traffic from the TAPS terminal in Valdez. Basically the VTS will monitor and control marine traffic in Port Valdez, Prince William Sound and the approaches thereto.

The Coast Guard is currently in the initial stages of developing the regulatory package for the Vessel Traffic Service. Following the development of a set of "Operational Guidelines" the Coast Guard plans to hold preliminary informal hearings with interested parties prior to drafting proposed regulations. These informal hearings are tentatively scheduled for February of 1976.

If your organization is interested in providing input during the upcoming regulatory development process, it is requested that you identify a contact by name and address for our future use. If you choose to do so, your organization will be placed on our permanent mailing list for future correspondence and your participation in any hearings or meetings will be invited.

Please address your replies to:

Commander(mps)
17th Coast Guard District
P. O. Box 3-5000
Juneau, Alaska 99802
ATTN: VTS Valdez

MARINE PILOTING

Southeastern Alaska Pilots' Association

P.O. BOX 1539
KETCHIKAN, ALASKA 99901

TELEPHONE: 225-4240
225-3030

CABLE ADDRESS: SEAPILOTS

March 2, 1976

Dear Tom:

Inclosed is the letter to the Director of Occupational Licensing, placing this training and Licensing of Super Tanker Pilots on the agenda for the next meeting. Harley is investagating the facility that is supposed to be at ~~the~~ Kings Point, New York. This would be much less costly than sending people to France for training.

Yours truly,

Capt. Jack Maroni

Capt. Jack Maroni

March 2, 1976

Sharon Andrews
Director of Occupational Licensing
State of Alaska
Pouch D
Juneau, Alaska 98811

COPY

Subject: Training and Licensing of Pilots on Super Tankers.

Dear Director:

I wuld like to take this opertunity to ask you to have placed on the agenda for the next meeting of the Board of Marine Pilots, to be held April 21 in Juneau, the item: The requirment of special trainging and Licensing of State Pilots on Super Tankers in the waters of Alaska.

Yours truly,

Capt. Jack Maroni
Member of Board of Marine Pilots
State of Alaska

Alaska State Legislature

SENATOR CHANCY CROFT
PRESIDENT OF THE SENATE

POUCH V
JUNEAU, ALASKA 99811
PHONE 907-465-3755

425 G STREET
ANCHORAGE, ALASKA 99501

January 13, 1976

Mark Singletary
Atlantic-Richfield Company
Box 360
Anchorage, Alaska 99510

Dear Mr. Singletary:

This letter is to thank you for your help in arranging the trip on the oil tanker, "Prudhoe Bay".

After having spent three months reading about tankers and how they operate, I was very appreciative of the opportunity to observe one first hand. These ships in person are very much more impressive than they are on paper.

If you would be kind enough to extend my appreciation to the captain and crew of the "Prudhoe Bay", I would appreciate it.

Thank you very much for your help.

Sincerely

Tom Biss, Administrative Assistant
Senate Democratic Caucus

UNIVERSITY OF WASHINGTON
SEATTLE, WASHINGTON 98195

Room 606
JB-20

School of Law
Office of the Dean
Condon Hall

October 30, 1975

Mr. Stuart C. Hall
Senior Legislative Counsel
Legislative Affairs Agency
Post Office Box 90
Juneau, Alaska 99802

Dear Mr. Hall:

The purpose of my letter is twofold; to thank you for your attention at the hearing of the Select Committee on Transportation on October 22nd, and to explain the circumstances under which I was selected to attend the hearing.

Alyeska Pipeline Service Co. had contacted Prof Don McKernan of the Institute for Marine Studies here at the University, and asked if he was aware of anyone in the program who would be able to make an informational presentation before a committee of the Alaska Legislature. Prof. McKernan then contacted Prof. William T. Burke of the Law and Marine Affairs LL.M. Program which is associated with the Institute.

Prof. Burke was aware that I had begun to do research in the area of state-federal relations in the context of oil transport, and told me about the opportunity. Needless to say, I was interested in presenting my research and ideas on the subject, with the caveat that my purpose was solely informational for the benefit of the Legislative Committee, and that my remarks would be of my own choosing. The presentation was a one-time event; the funding for my transportation was arranged between Alyeska and the Institute for Marine Studies. I hope the above helps to clarify my position.

Enclosed please find a copy of an article to be published shortly regarding the National Coastal Zone Management Act of 1972 and states' power under the 'consistency' aspect of the Act.

NOT enclosed

Very truly yours,

Richard Du Bey

Richard Allan Du Bey
Predoctoral Research Associate
Law and Marine Affairs LL.M. Program

encl.

UNIVERSITY OF WASHINGTON
SEATTLE, WASHINGTON 98195

Room 606

JB-20
School of Law
Condon Hall

November 4, 1975

Mr. Stuart C. Hall
Senior Legislative Counsel
Legislative Affairs Agency
Post Office Box 90
Juneau, Alaska 99802

Dear Mr. Hall:

Please find enclosed three (3) corrected copies of the draft of my written testimony before the Select Committee on Transportation of the Alaska Legislature.

In the event that my research efforts can be of any further assistance to the Committee, please contact me.

Very truly yours,

Richard A. DuBey

Richard Allan Du Bey
Predoctoral Research Associate
Law and Marine Affairs LLM. Proggram

encls.